(13)

Supreme Court, U.S.
FILED
JAN 11 2000
CLERK

No. 00-454

IN THE

Supreme Court of the United States

ATKINSON TRADING COMPANY, INC.,
Petitioner,

v.

JOE SHIRLEY, JR., VICTOR JOE, DERRICK B. WATCHMAN, AND ELROY DRAKE, MEMBERS OF THE NAVAJO TAX COMMISSION; AND STEVEN C. BEGAY, EXECUTIVE DIRECTOR OF THE NAVAJO TAX COMMISSION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 22, 2000
CERTIORARI GRANTED NOVEMBER 27, 2000

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TENTH CIRCUIT COURT OF APPEALS

98-2247

ATKINSON TRADING COMPANY, INC.,
a New Mexico corporation,
Plaintiff-Appellant,

v.

JOE SHIRLEY, JR.; VICTOR JOE; DERRICK B. WATCHMAN;
ELROY DRAKE; MEMBERS OF THE NAVAJO TAX COMMISSION;
STEVEN C. BEGAY,
Director of the Navajo Tax Commission,
Defendants-Appellees.

DOCKET ENTRIES

DATE	PROCEEDINGS
9/23/98	[1165605] Civil case docketed. Preliminary record filed. DATE RECEIVED: 9/22/98. Transcript order form due 10/5/98 for Jennifer Bean pursuant to R.42.1. Docketing statement due 10/5/98 for Atkinson Trading. Notice of appearance due 10/5/98 for Steven C. Begay, Navajo Tax, Elroy Drake, Derrick B. Watchman, Victor Joe, Joe Shirley, Atkinson Trading. (nak)
9/23/98	[1165610] Notice received from Appellant Atkinson Trading that a transcript is not necessary for this appeal. Notice due that record is complete 9/28/98 for Bruce D. Black. (nak)
9/23/98	[1165618] Docketing statement filed by Atkinson Trading. Original and 4 copies. c/s: y. (nak)
9/23/98	[1165621] Statement of Issues filed by Appellant Atkinson Trading. Original and 3 copies. c/s: y. (nak)

DATE	PROCEEDINGS
9/23/98	[1165652] Notice received from Appellant Atkinson Trading that a transcript is not necessary for this appeal. Notice due that record is complete 9/28/98 for Bruce D. Black. (fg)
9/24/98	[1165993] Filed notice record is complete 9/22/98 Appellant's brief due 11/2/98 for Atkinson Trading. Appellant's appendix due 11/2/98 for Atkinson Trading. (fg)
9/25/98	[1166422] Case referred for mediation conferencing. (fg)
10/5/98	[1168925] Notice of appearance filed by William J. Darling, Margaret P. Armijo as attorney for Atkinson Trading. CERT. OF INTERESTED PARTIES (y/n): y (hrs)
10/26/98	[1173662] Order filed by PF - notice of appearance form due 11/5/98 for Joe Shirley, Victor Joe, Derrick B. Watchman, Elroy Drake, Navajo Tax, and for Steven C. Begay. Parties served by mail. (nak)
11/2/98	[1176268] Appellant's deficient brief filed by Atkinson Trading. Corrected appellant's brief due 11/13/98 for Atkinson Trading Apet Appendix due 11/13/98 for Atkinson Trading (hrs)
11/3/98	[1176488] Notice of appearance filed by Marcelino R. Gomez as attorney for Steven C. Begay, Navajo Tax, Elroy Drake, Derrick B. Watchman, Victor Joe, and Joe Shirley. CERT. OF INTERESTED PARTIES (y/n): y. (afw)
11/9/98	[1178413] Appellant's supplemental authority filed by Atkinson Trading. Original and 0 copies. c/s: y. (nak)

DATE	PROCEEDINGS
11/9/98	[1178682] Appellant's brief filed by Atkinson Trading. Original and 7 copies. c/s: y. Served on 11/6/98. Oral argument? y., Appendix filed. Original and 1 appendix copy. Appendix Pages: 1030. Appellee's brief due 12/9/98 for Joe Shirley, for Victor Joe, for Derrick B. Watchman, for Elroy Drake, for Navajo Tax, for Steven C. Begay. (fg)
11/9/98	[1243360] Oversized record filed. Record can be located at Section: Y Shelf: 2 (ds)
12/7/98	[1186283] Appellee's brief filed by Steven C. Begay, Navajo Tax, Elroy Drake, Derrick B. Watchman, Victor Joe, Joe Shirley. Original and 7 copies. c/s: y. Served on 12/2/98 Oral Argument? y Appellant's optional reply brief due 12/21/98 for Atkinson Trading. (hrs)
12/21/98	[1189961] Appellant's reply brief filed by Atkinson Trading. Original and 7 copies. c/s: y (afw)
2/10/99	[1202599] Hearing set for May 1999 Session, at Denver, Colorado. (sls)
3/24/99	[1215032] Appellant's motion filed by Appellant Atkinson Trading to reschedule oral argument [98-2247] . Original and 3 copies. c/s: y. (fg)
3/25/99	[1215290] Appellant's motion to reschedule oral argument submitted to panel. (ss)
4/9/99	[1220791] Order filed by PF denying Appellant's motion to reschedule oral argument [1215032-1]. Parties served by mail. (sls)
5/12/99	[1231994] Case argued and submitted to Judges Ebel, McKay, Briscoe. (sls)

DATE	PROCEEDINGS
5/25/99	[1235796] Case mediation conferencing terminated. (afw)
2/8/00	[1300240] Appellant's supplemental authority filed by Atkinson Trading and submitted to court. Original and 3 copies. c/s: y. (kf)
5/2/00	[1321432] Terminated on the Merits after Oral Hearing; Judgment Affirmed; Written, Signed, Published. Ebel; McKay, authoring judge; Briscoe, dissenting. [98-2247] (kf)
5/16/00	[1325312] Petition for rehearing or rehearing in banc [98-2247] filed by Atkinson Trading. Original and 14 copies. c/s: y. (kf)
5/16/00	[1325314] Document [1325312-1] Petition for rehearing or rehearing in banc filed by Appellant Atkinson Trading submitted to panel. (kf)
5/23/00	[1327040] Order filed by Judges Ebel, McKay, Briscoe - Response to petition for rehearing en banc due 6/7/00 for Joe Shirley, Victor Joe, Derrick B. Watchman, Elroy Drake, Navajo Tax, Steven C. Begay. Parties served by mail. (nak)
6/7/00	[1330703] Response filed by Steven C. Begay, Navajo Tax, Elroy Drake, Derrick B. Watchman, Victor Joe, Joe Shirley, Atkinson Trading to court ordered response regarding petition for rehearing en banc. Original and 14 copies. c/s: y. (nak)
6/7/00	[1330706] Response filed by Steven C. Begay, Navajo Tax, Elroy Drake, Derrick B. Watchman, Victor Joe, Joe Shirley submitted to court. (nak)

DATE	PROCEEDINGS
6/26/00	[1335391] Order filed by Judges Seymour, McKay, Tacha, Baldock, Brorby, Ebel, Kelly, Henry, Briscoe, Lucero and Murphy denying Petition for rehearing in banc. Judge Briscoe to grant and called for a poll of the en banc court. Judges Tacha, Baldock, Brorby and Murphy also voted to grant rehearing en banc. As the active judges split 5 to 5 in response, the suggestion fails. [1325312-1] (nak)
7/5/00	[1337114] Mandate issued to district court. Mandate receipt due 8/4/00. (afw)
7/11/00	[1338780] Appellant's motion to stay mandate filed by Appellant Atkinson Trading is docketed as a motion to recall the mandate. [98-2247] Original and 3 copies. c/s: y (afw)
7/11/00	[1338783] Appellant's motion to recall the mandate submitted to court. (afw)
7/17/00	[1340431] Order filed by Judges Ebel, McKay, Briscoe denying Appellant's motion to recall the mandate [1338780-1]. Parties served by mail. (nak)
8/3/00	[1345079] Mandate receipt filed. (jal)
9/28/00	[1358845] Petition for writ of certiorari filed on 9/25/00 by Appellant Atkinson Trading. Supreme Court Number 00-454. (kf)
12/4/00	[1375667] Supreme Court order dated 11/27/00 granting certiorari filed. (gah)

U.S. DISTRICT COURT
for the District of New Mexico (Albuquerque)

97-CV-1261

ATKINSON TRADING COMPANY, INC.,
a New Mexico corporation,
Plaintiff-Appellant,

v.

JOE SHIRLEY, JR.; VICTOR JOE; DERRICK B. WATCHMAN;
ELROY DRAKE; MEMBERS OF THE NAVAJO TAX COMMISSION;
STEVEN C. BEGAY,
Director of the Navajo Tax Commission,
Defendants-Appellees.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
9/23/97	1	COMPLAINT for Declaratory Judgment (5 Summonses issued) (referred to Magistrate Lorenzo F. Garcia) (ec)
9/23/97	—	FILING FEE PAID: on 9/23/97 in the amount of $150.00, receipt #: 107505. (ec)
10/14/97	2	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE by Marcelino R. Gomez on behalf of the defts on 10/9/97 (kd) [Entry date 10/15/97]
10/24/97	3	MOTION by defts to extend time to answer pltf's complaint until 11/18/97 (kd)
10/27/97	4	ORDER by Magistrate Lorenzo F. Garcia granting deft's mtn to extend time to answer pltf's complaint until 11/18/97 [3-1] (cc: all counsel) (kd)

DATE	NO.	PROCEEDINGS
10/29/97	5	INITIAL SCHEDULING ORDER by Magistrate Lorenzo F. Garcia ; Rule 16 scheduling conference set for 1/5/98 at 3:00 pm; provisional discovery plan and IPTR due 12/29/97 (cc: all counsel) (jrm)
10/31/97	6	NOTICE by pltf of change of address for attys William J. Darling and Margaret P. Armijo (kd) [Entry date 11/03/97]
11/18/97	7	ANSWER by defendants w/affirmative defenses [1-1] (jrm)
12/29/97	8	PROVISIONAL DISCOVERY PLAN by parties herein (pr) [Entry date 12/30/97]
1/6/98	9	CLERK'S MINUTES: before Magistrate Lorenzo F. Garcia Rule 16 scheduling conference held on 1/5/98 (kd) [Entry date 01/07/98]
1/7/98	10	ORDER by Magistrate Lorenzo F. Garcia Assigning the case to an Administrative Track and Staying Discovery (cc: all counsel) (kd)
1/9/98	11	STIPULATION by the parties re: Official Navajo Tribal Court Records in the matter of: Atkinson Trading Co, Inc. No. SC-CV-54-95 (kd) [Entry date 01/12/98]
1/14/98	12	INITIAL PRE-TRIAL REPORT Judge Bruce D. Black and Magistrate Lorenzo F. Garcia; Estimated # of Trial Days: 1-2, Chances of Settlement: poor (cc: all counsel) (kd) [Entry date 01/15/98]

DATE	NO.	PROCEEDINGS
1/14/98	13	ORDER by Judge Bruce D. Black requesting the Supreme Court of the Navajo Nation to certify the record of the proceedings as described hereing (cc: all counsel) (kd) [Entry date 01/15/98]
2/11/98	14	INDEX of record on appeal filed by plaintiff pursuant to order [13-1] (dmw)
2/11/98	15	NOTICE by plaintiff of filing Certification and Index Listing of Appellate Case File (dmw)
2/11/98	16	CORRECTED INDEX of record on appeal filed by plaintiff pursuant to order [13-1] (dmw)
2/26/98	17	STIPULATED MOTION by plaintiff for order re use of record (dmw) [Entry date 02/27/98]
3/2/98	18	STIPULATION and ORDER by Judge Bruce D. Black: granting the joint mtn for order re use of record [17-1] see order for specifics (cc: all counsel) (kd) [Entry date 03/04/98]
3/30/98	19	MOTION by pltf for summary judgment against the defts (kd) [Entry date 03/31/98]
3/30/98	20	MEMORANDUM by pltf in support of mtn for summary judgment against the defts [19-1] (kd) [Entry date 03/31/98]
3/30/98	21	MOTION by pltf for trial de novo re: all matters at issue in this action (kd) [Entry date 03/31/98]

DATE	NO.	PROCEEDINGS
3/30/98	22	MEMORANDUM by pltf in support of mtn for trial de novo re: all matters at issue in this action [21-1] (kd) [Entry date 03/31/98]
3/30/98	23	MOTION by defts Navajo Tax Commission and Steven C Begay for summary judgment against pltf (kd) [Entry date 03/31/98]
3/30/98	24	MEMORANDUM by defts in support of mtn for summary judgment against pltf [23-1] (kd) [Entry date 03/31/98]
4/23/98	25	RESPONSE by pltf to defts' motion for summary judgment [23-1] (rd [Entry date 04/26/98]
5/11/98	26	REPLY by plaintiff to memorandum in opposition to trial de novo (opposition not in system) (sl)
5/11/98	27	REPLY by plaintiff to defts' response to motion for summary judgment against the defts [19-1] (sl)
5/11/98	28	MOTION by defts for summary judgment (rd) [Entry date 05/27/98]
5/11/98	29	MEMORANDUM by defts in support of motion for summary judgment [28-1] (pr) [Entry date 05/12/98]
5/11/98	30	RESPONSE by pltf to defts' motion for summary judgment [28-1] (pr) [Entry date 05/12/98]
5/11/98	31	REPLY MEMORANDUM by defts in support of motion for summary judgment [28-1] (pr) [Entry date 05/12/98]

5/11/98	32	MEMORANDUM by deft Navajo Tax in opposition to motion for summary judgment against the defts [19-1] (pr) [Entry date 05/12/98]
5/11/98	33	MEMORANDUM by deft Navajo Tax in opposition to motion for trial de novo re: all matters at issue in this action [21-1] (pr) [Entry date 05/12/98]
5/20/98	34	REQUEST by plaintiff for hearing on cross-mtn for summary judgment and mtn for trial de novo (jrm) [Entry date 05/21/98]
8/21/98	35	MEMORANDUM, OPINION, AND ORDER: by Judge Bruce D. Black granting defts' motion for summary judgment against pltf [21-1], denying pltf's motion for trial de novo re: all matters at issue this action [21-1] and denying pltf's motion for summary judgment against the defts [19-1] (cc: all counsel electronically) (rd) [Entry date 08/24/98]
8/21/98	36	ORDER by Judge Bruce D. Black re [23-1], re [21-1], re [19-1] and dismissing case (cc: all counsel electronically) (rd) [Entry date 08/24/98]
9/10/98	37	NOTICE OF APPEAL by plaintiff Atkinson Trading from Dist. Court decision [36-2], [35-1] ; Fees $105.00—Distribution as required. (cc: all counsel) (pg) [Entry date 09/16/98]

[Filed Feb 1 1996 SUPREME COURT NAVAJO NATION]

IN THE SUPREME COURT OF THE NAVAJO NATION
WINDOW ROCK, ARIZONA

Case No. SC-CV-54-95

IN THE MATTER OF:

ATKINSON TRADING CO., Inc.,
Appellant,

v.

OFFICE OF EXECUTIVE DIRECTOR
NAVAJO TAX COMMISSION
Appellee.

CORRECTED INDEX OF RECORD ON APPEAL AND RECORD ON APPEAL

TO THE NAVAJO SUPREME COURT CLERK:

Transmitted herewith is the *Corrected Index of Record on Appeal* in the above-captioned matter, together with four documents identified as Tabs 27-31 which should be included in the record on appeal.

Sincerely,

/s/ Henry L. Adams,
HENRY L. ADAMS, HEARING OFFICER
Office of Hearing and Appeals
Post Office Box 1300
Window Rock, Arizona 86515-1300
(520) 871-7836/7837/7838

[Filed Feb. 11, 1998 UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO]

[Filed Feb 1, 1996 SUPREME COURT NAVAJO NATION]

IN THE SUPREME COURT OF THE NAVAJO NATION
WINDOW ROCK, ARIZONA

[CV–97-1261 BB/LFG]

Case No. SC-CV-54-95

IN THE MATTER OF :

ATKINSON TRADING CO., Inc.,
Appellant,

v.

OFFICE OF EXECUTIVE DIRECTOR
NAVAJO TAX COMMISSION
Appellee.

CORRECTED INDEX OF RECORD ON APPEAL AND RECORD ON APPEAL

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CERTIFICATE OF SERVICE

Mailed a copy of the foregoing Corrected Index of Record on Appeal, by U.S. Mail, postage prepaid this 31 day of January, 1996 to:

William J. Darling, Esq.
Katherine M. Peck, Esq.
Attorneys for Taxpayer
Post Office Box 3337
Albuquerque, New Mexico 87190-3337

Marcelino R. Gomez, Esq.
Assistant Attorney General
Tax Unit
Navajo Nation Department of Justice
Window Rock, Arizona 86515

cc. Steve C. Begay, Executive Director
Amy L. Alderman, Esq.
Office of the Navajo Tax Commission

/s/ Ella Owens
ELLA OWENS
Legal Secretary

CJY-27-92

Class "C" Resolution

No BIA Action Required.

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Enactment of the Hotel Occupancy Tax

WHEREAS:

1. The Navajo Nation Council is the governing body of the Navajo Nation, 2 N.T.C., Section 102 (a); and

2. Pursuant to 2 N.T.C., Section 724 (f) (2) , the Economic Development Committee of the Navajo Nation Council, in consultation with the Navajo Tax Commission, is authorized to make recommendations to the Navajo Nation Council regarding all taxation proposals affecting business or commercial activities; and

3. The Navajo Tax Commission is delegated the power, pursuant to 2 N.T.C., Section 3353 (a) (1), to review and study all sources of wealth and income within the Navajo Nation and possible revenues from the taxation of those sources, in order to develop an appropriate comprehensive system of taxation; and

4. The Navajo Tax Commission had reviewed existing tax revenue sources and has determined that the primary industry taxed is the natural resource extractive industry. The Navajo Tax Commission has also determined that the natural resource tax base is declining and is expected to continue to gradually decline in the future; and

5. In conformity with its establishing legislation, the Navajo Tax Commission has therefore determined that to develop and maintain a comprehensive system of taxation, the Navajo tax base must now be expanded; and

6. The Navajo Tax Commission has determined that the Navajo tax base will be expanded from the taxation of lodging or room rentals on the Navajo Nation; and

7. The Navajo Tax Commission has therefore developed the Hotel Occupancy Tax, codified as Title 24, Navajo Tribal Code, Section 700 *et seq.*, Hotel Occupancy Tax, and it proposes that it be enacted into law by the Navajo Nation Council, as attached in Exhibit "C"; and

8. The Hotel Occupancy Tax will produce significant increases in tax revenue; and

9. The initial impact of expanding the Navajo tax base will be greater stability of the tax base and greater self-reliance through additional revenues made available for governmental services and projects, with minimal impacts to the bearer of the taxes—Navajo businesses, Navajo enterprises and Navajo residents; and

10. By resolution TAX-92-087 dated March 20, 1992 (Exhibit "A"), the Navajo Tax Commission recommended to the Economic Development Committee of the Navajo Nation Council the approval of the Amendments to the Business Activity Tax (Exhibit "B") and Enactment of the Hotel Occupancy Tax (Exhibit "C"); and

11. On June 8, 1992, the Navajo Tax Commission held a joint meeting with the Economic Development Committee of the Navajo Nation Council to consider a proposed resolution recommending to the Navajo Nation Council the approval of the amendments to the Business Activity Tax and Enactment of the Hotel Occupancy Tax; and

12. After consideration, the Economic Development Committee of the Navajo Nation Council voted 6 in favor, 0 opposed and 0 abstained to table the proposed resolution; and

13. The Navajo Tax Commission has since held a public hearing on Friday, June 25, 1992, to receive public comments

on both the Business Activity Tax Amendments and the Hotel Occupancy Tax (Exhibit "E"); and

14. The Navajo Tax Commission, at a subsequent meeting, based on public comments and the actions of the Economic Development Committee of the Navajo Nation Council, determined to table the Business Activity Tax proposals for six months for futher study and to recommend approval of only the Hotel Occupancy Tax (Exhibit "C"), to the Economic Development Committee of the Navajo Nation Council; and

15. By resolution EDCJY-53-92 dated July 1, 1992, the Economic Development Committee of the Navajo Nation Council concurred in the decision of the Tax Commission to table amendments to the BAT (Exhibit "D") and approved the Enactment of the Hotel Occupancy Tax (Exhibit "C").

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby approves, adopts and enacts the Hotel Occupancy Tax as 24 N.T.C., Section 700 *et seq.*, as set out in Exhibit "C" to this resolution.

2. The Navajo Nation Council further directs the Navajo Tax Commission to conduct further evaluation of the Navajo Tax structure, including the Navajo Business Activity Tax, and to report back to the Navajo Nation Council in six (6) months with recommendations.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 51 in favor, 6 opposed and 0 abstained, that 21st day of July 1992.

/s/ Nelson Gorman, Jr.
NELSON GORMAN, JR.
Speaker
Navajo Nation Council
July 28, 1992

ACTION BY THE EXECUTIVE BRANCH

1. Pursuant to 2 N.T.C., Section 1005 (c) (1), I hereby sign into law the foregoing legislation on this 30 day of July, 1992:

/s/ Peterson Zah
PETERSON ZAH, PRESIDENT
Navajo Nation

* * * *

2. Pursuant to 2 N.T.C. , Section 1005 (c) (10) , I hereby veto the foregoing legislation this ___ day of ___1992 for the reason(s) expressed in the attached letter to the Speaker:

_____
PETERSON ZAH, PRESIDENT
Navajo Nation

THE NAVAJO NATION
OFFICE OF HEARING AND APPEALS

Case No. 95-008

IN THE MATTER OF:

ATKINSON TRADING COMPANY, INC.

TRANSCRIPT OF PROCEEDINGS
July 24 & 25, 1995
Window Rock, Arizona

BEFORE: HENRY L. ADAMS
Hearing Officer

APPEARANCES

For Atkinson Trading Company, Inc.:
WILLIAM DARLING
Park Square Two, Suite 820
6565 Americas Parkway, NE
Albuquerque, New Mexico 87190

For the Navajo Tax Commission:
MARCELINO GOMEZ &
LURALENE TAPAHE
The Navajo Nation
Department of Justice
Office of the Attorney General
P.O. Drawer 2010
Window Rock, Arizona 86515

* * * *

[19]

EDWIN JOE ATKINSON

After having been first duly sworn under oath, was questioned and testified as follows:

[20]

DIRECT EXAMINATION

BY MR. DARLING:

Q Would you please state your full name.
A Edwin Joe Atkinson.
Q Are you known as Joe Atkinson?
A Yes.
Q Mr. Atkinson, what is your position with Atkinson Trading Company?
A I'm the president of the corporation.
Q How long have you been president of the corporation?
A Since 1972.
Q Where is Atkinson Trading Company incorporated?
A New Mexico.
Q Would you describe Atkinson Trading Company's facilities?
A We have a store in Gallup, New Mexico, and we have an operation in Cameron, Arizona.
Q What is the operation in Cameron, Arizona?
A It's a curio store, market, restaurant, cafeteria, gallery and motel.
Q Where is that facility located?
A Fifty-four miles north of Flagstaff, on Highway 89.
Q Who owns the property that Cameron Trading Post [21] is located on?
A Atkinson Trading Company, Inc.
Q How is that held, in what kind of ownership?
A It's fee.

Q Now, is there a direct—does your property—when I say "your property," I mean Atkinson Trading Company's property. Does it abut directly onto the public right-of-way of Highway 89?

A Yes.

Q Who established the trading post?

A Hubert Richardson.

Q When was that?

A I believe in 1916.

Q Now, have you traced back the title to the property?

A No, I haven't.

Q Well, do you know how the property originally came into private ownership?

A I believe it was a United States patent.

Q Describe the typical guest or customer at Atkinson Trading Company's facility in Cameron, Arizona, Cameron Trading Post.

A They're tourists.

Q Where do they typically come from?

A Grand Canyon. That's why they're in the area, [22] is to see the Grand Canyon.

Q Now, you mentioned Highway 89. Where does that come from?

A It comes from Flagstaff.

Q And in Flagstaff, what highway does that tie into?

A Interstate 40.

Q Now, where is Cameron Trading Post in relationship to Highway 64?

A It's one mile north of the junction of Highway 89 and Highway 64.

Q Where does Highway 64 lead?

A To the Grand Canyon.

Q Now, how far is it from Cameron Trading Post, along Highway 89, to the boundary of the Navajo reservation, going south?

A Eight miles.

Q Is there a community there?

A Yes.

Q What's the name of that community?

A Grey Mountain.

Q Now, going west along Highway 64, how far is it to the boundary of the Navajo reservation?

A I don't know.

Q Do you have any approximation?

[23] A No. I know that it's about 50 miles to the boundary of the Grand Canyon.

Q And the boundary of the Navajo Nation, is that somewhere between the junction of Highway 89 and the boundary of the Grand Canyon?

A Yes.

Q Where are Atkinson Trading Company's guests—where do they originate; what parts of the country, of the world?

A They come from all over the United States and Europe, Japan.

Q How do most of the guests and customers travel to Cameron Trading Post?

A The majority of them come by tour bus.

Q How do the rest of them come?

A Private car, rental car.

Q As far as you know, do most of them go anywhere else on the Navajo Nation other than stopping at Cameron Trading Post and then exiting the Navajo reservation?

A As far as I know, they're there to see the Grand Canyon, and they usually go into Las Vegas.

Q Now, to your knowledge, while Atkinson Trading Post's guests at Cameron Trading Post are on your property, do they transact any business with the Navajo Nation?

[24] A No.

Q Are there any facilities for them to transact business with the Navajo Nation?

A No.

Q Do they transact business with any Navajos who are not employed with Atkinson Trading Company?

A No.

Q Do you have any vendor areas set up where individual Navajos can sell their wares on your property?

A No.

Q What do your guests do while they're at your property?

A They shop in the store, eat in the dining room, stay over in the back of the rooms.

Q During that time, do they constitute any threat to the political integrity of the Tribe?

A No.

MR. GOMEZ: Objection. He's asking the witness to speculate. That's something that—he hasn't established any foundation.

HEARING OFFICER ADAMS: Please answer. Let's move on.

Q To your knowledge, while your guests are on your property, do they constitute any threat to the economic integrity of the Tribe—economic security of the Tribe?

[25] MR. GOMEZ: I'm going to object to that question, also, on the same basis.

HEARING OFFICER ADAMS: Your question is speculative, Mr. Darling.

MR. DARLING: Well, I said "to his knowledge." Let me lay some foundation.

HEARING OFFICER ADAMS: All right.

Q (By Mr. Darling) Mr. Atkinson, given the activities of your guests on your property, eating in the restaurant, shopping in the store, the gallery or staying overnight in the hotel, have you ever observed any conduct which would constitute a threat to the economic security of the Navajo Nation?

MR. GOMEZ: We would object on speculation, also. There hasn't been any clarification as to what the economic security of the Navajo Tribe is.

MR. DARLING: I think he can answer that. I could rephrase it.

Q (By Mr. Darling) Have you ever seen them have any effect on the economics of the Navajo Nation at all?

HEARING OFFICER ADAMS: You may answer.

A No.

Q Have you ever seen them have any effect on the health or welfare of the Navajo Nation while they were on your property?

[26] A No.

Q Now, at Cameron Trading Post, where do you get your electricity?

A Arizona Public Service.

Q And is that a Navajo-owned business; do you know?

A I think it's a private corporation. I don't know.

Q Where does Cameron Trading Post get its phone service?

A U.S. West.

Q Where does Cameron Trading Post get its gas service?

A Grave's Butane in Flagstaff.

Q What kind of gas do you use at Atkinson Trading Post?

A Propane.

Q And you buy that from a company in Flagstaff; is that correct?

A Yes.

Q Where does Cameron Trading Post get its water?

A From our wells.

Q I have several books with exhibits here.

MR. DARLING: I'd like to hand you one, and I'd like to hand the witness one, also.

[27] Q If you would turn to Exhibit No. 2. Can you tell me what that is?

A A Certificate of Water Right from the State of Arizona.

Q And is it pursuant to this water right that Atkinson Trading Company operates its wells?

A Yes.

Q What does Atkinson Trading Company do with its sewage at Cameron Trading Post?

A It goes through our sewer plant.

Q And is that a sewer plant that you operate and maintain yourself?

A Yes.

Q Would you describe the discharge from that sewer plant?

A It's potable.

Q What does "potable" mean, to your understanding?

A It's drinkable.

Q Where does that discharge go?

A It goes into the Little Colorado.

Q And does that meet all state and federal requirements?

A Yes, it does.

Q What does Atkinson Trading Company do with its garbage?

[28] A It's picked up by a garbage disposal company in Flagstaff.

Q How long have you been doing that?

A Four or five years.

Q To your knowledge—well, do any nonmembers of the Navajo Nation live on your property at Cameron?

A Yes.

Q Where do they get their medical treatment?

A At the PHS in Tuba City.

Q Now, I'm talking about nonmembers.

A Oh, nonmembers? I thought you said do any Navajos—

Q No, do any nonmembers live on your property?

A Yes.

Q Where do they get their medical treatment?

A In Flagstaff.

Q Where do their children go to school?

A There's a school—it's like an elementary school. I believe it's over by the Cameron Chapter. For the first few years, they go there and then they—or some of them still go to Flagstaff for those years. But some do go to that school for the first three years.

Q And then after those first few years, where do they go to school?

A Flagstaff.

[29] Q Now, the children that go to school in Cameron, who maintains that school, to your understanding?

A To my understanding, it's maintained by the State.

Q If your guests or customers have a health problem while they're at Cameron Trading Post, where do you refer them for medical treatment?

A To Flagstaff.

Q And why do you refer them to Flagstaff rather than to the Indian Health Service Facility through the City?

A The facility there is limited as to what they can do for nonmembers.

Q At Cameron Trading Post when there is an emergency and you do a 911 call, where does that ring?

A To my knowledge, it rings in Flagstaff.

Q Now, Highway 89 and Highway 64, who maintains those highways?

A ADOT.

Q And what is that?

A Arizona Department of Transportation.

Q Are those highways patrolled by the Arizona State Police?

A Yes, they are.

Q Are there any restrictions, as far as you know, [30] on anybody coming along those highways to come to your facility?

A No.

Q Does the Navajo Nation have any checkpoints or anything to restrict access along those roads?

A No.

Q What does Cameron Trading Post do with respect to fire protection?

A We have our own fire hydrants, fire hoses, and our own personnel.

Q Do you keep those facilities in good condition?

A Yes. We check all of the—we check the hydrant pressures and the hoses about twice a month to make sure.

Q Now, have you had any fires out at Cameron Trading Post since you have been involved with it?

A One that I'm aware of.

Q And what was the—who did you call when that fire happened?

A I don't know who they called. I was not on the premises.

Q What is the fire rating for your fire insurance at Cameron Trading Post?

A It's the highest rating they can give for non-protection. It's like a Class 10, I believe.

[31] Q So you're rated as if you had no protection. Is that what you're saying?

A That's correct.

Q Now, as far as you're aware, describe what police protection Cameron Trading Post has.

A Practically none.

Q Why do you say that?

A If we have a—I don't know of maybe one incident where there were non-Navajo people involved. If we called DPS, they responded quickly.

Q What is "DPS"?

A Department of Public Safety. That would be Arizona's equivalent to New Mexico's state police.

Q Okay.

A They responded well and quickly. About where most of—if they come out there and it's a member of the Navajo Tribe, then they can't—they don't have jurisdiction. That's what we're told, that they don't have jurisdiction. They will respond and be there until they can get someone from the Navajo Police to respond.

Q Now where is the nearest Arizona State Police facility?

A Grey Mountain, eight miles away.

Q What has been your experience in response to the Navajo Police?

[32] A Atkinson Trading Company's experience or my sole experience?

Q Yes, Atkinson Trading Company's experience.

A Oftentimes, they will not have an officer in the area and refer you to the county who, in turn, will refer you back to the Navajo Police because it's not a nonmember that's involved. Consequently, we have no response from this county sheriff or the Navajo Tribe.

Q Okay. Could—

A And then when they do respond, they take whatever—it depends on what has happened as to what they do after that.

Q Okay. Could you give some examples of what you mean by that?

A If it's a problem with an inebriated person, they will remove them from the premises. But they're usually back in a short period of time. If it's a problem with breaking into a vehicle or something like that, which you mentioned earlier, if it's that kind of problem, which we did have, and we did catch the people that were breaking in, they picked them up. We asked if we could file charges and we were told, no, it wouldn't do any good because they couldn't do anything about it—the police couldn't do anything. It wouldn't do us any good to file charges. They took the perpetrators home, and they were [33] back the next night.

Q Does Atkinson Trading Company have any consensual relationships with the Navajo Nation?

A No.

Q Has Atkinson Trading Company or has—let me ask it this way: As far as you know, have any individual Navajos ever asked to rent a room from Atkinson Trading Company at Cameron Trading Post?

A As far as I know? No. I'm sure they do. But if they did, they would be welcome to stay there.

Q Describe the nature of the sales that Cameron Trading Post makes to individual Navajos.

A They buy meals. They buy things from the store, arts and crafts, curios, T-shirts. They buy groceries, whatever they wish to buy.

Q What percent of your total business is that?

A One percent, maybe.

Q Now, do you charge Arizona sales tax of nonmembers who buy from you?

A Yes.

Q Do you charge Arizona sales tax from Navajo Nation members who buy from you?

A No.

Q Has Atkinson Trading Company, in the past, bought arts and crafts from individual Navajos at Cameron [34] Trading Post?

A Yes.

Q What percent of the total inventory that you got on sale did that constitute?

A Minuscule. A fraction of one percent—a tenth of one percent.

Q Why did you buy arts and crafts from the local people?

A Because they're our neighbors. We're doing it more to help them.

Q Do you still buy any of the arts and crafts from the local people at Cameron Trading Post?

A No, we do not.

Q Is Atkinson Trading—where do you get the Navajo arts and crafts and other Indian arts and crafts that you sell at Cameron Trading Post?

A From different vendors in New Mexico. It's mostly different vendors in New Mexico, some of them from Arizona.

Q Is Atkinson Trading Company an equal opportunity employer?

A Yes, we are.

Q Do you hire some Navajos to work at Cameron Trading Post?

A Yes, we do.

[35] Q Would you look at Exhibit No. 1 in that book?

A (Witness complies.)

Q By the way, while I think about that, I would like to move the admission of Exhibit No. 2.

MR. GOMEZ: I have no objection.

HEARING OFFICER ADAMS: It will be admitted.

(Note: Exhibit No. 2 admitted into evidence.)

Q (By Mr. Darling) What is Exhibit No. 1?

A Application for employment.

Q Is that the application for employment that's used at Cameron Trading Post?

A Yes, it is.

Q Does it have anywhere on there the person's—the applicant's race, ethnicity, national origin, gender, religion?

A No.

Q Do you use this application in your employment screening process?

A Yes.

MR. DARLING: I'd like to move the admission of Exhibit No. 1.

MR. GOMEZ: No objection.

HEARING OFFICER ADAMS: It will be [36] admitted.

(Note: Exhibit No. 1 admitted into evidence.)

Q (By Mr. Darling) What criteria does Atkinson Trading Company use in hiring its employees?

A The experience—I just went totally blank. The experience, ability, and that's from—I don't do the hiring personally, so I don't know any of the details. We do—in some instances, we don't require experience because we will do on-the-job training. But experience, willingness to work, attitude and ability.

Q Do you give any weight at all to race, national origin, gender, religion, any of those categories?

A No.

Q Do you feel that Atkinson Trading Company tries to hire the best qualified applicants without regard to those factors?

A Yes, I do.

Q Under the Equal Employment Opportunity Act, do you feel—is it your understanding that you could refuse to hire a qualified Navajo applicant?

A No.

Q How did you learn about the hotel occupancy tax?

A It was a written notice of some form.

Q After you learned of the hotel occupancy tax, [37] does Atkinson Trading Company file the tax forms and pay the taxes?

A Yes we have, under protest.

Q As a result of that, did you file a federal suit that then led up to this proceeding here?

A Yes.

* * * *

[39]

CROSS-EXAMINATION

BY MR. GOMEZ:

Q Would you please describe each of the business operations that you mentioned earlier that you operate on the fee land in Cameron?

A We have the motel; we have the restaurant; we have a cafeteria; we have a gallery; we have a retail store; we have a market and an RV park. I forgot to mention that before.

Q Were these the same operations at the Cameron Trading Post fee land when you took over the operations in 1977?

A Yes, with the exception of the gallery, and there—at the time we took over, they had a Laundromat, which we don't have any longer.

Q When did you eliminate the Laundromat?

A I don't recall. It's been a long time.

Q It was early on?

A Yes.

Q As far as the types of goods that are sold, you mentioned you have like a market. Is that like a food market or grocery store?

A Yes. It's more along the lines of a 7-Eleven, [40] Circle K.

Q Do you have like a meat market within that store?

A Yes, we do.

Q Do you have a butcher that works there, also, in the meat market?

A Yes, we do.

Q And I assume you sell some meats from the meat market; is that correct?

A Yes, we do.

Q Do you remember how many employees work in the grocery store?

A No, I don't.

Q Do you know who the current manager of the grocery store is?

A Yes, I do.

Q What's that person's name?

A Edward Humetewa.

Q Did you make grocery sales to members of the Navajo Tribe?

A Yes, we do.

Q Where do you acquire the goods that you sell in the grocery store?

A I'm not familiar with the particular vendors. That's not part of my position.

[41] Q Do you know where these vendors are located?

A I know that some come out of Flagstaff, some come out of Phoenix.

Q Do they usually deliver to your store?

A Yes.

Q But these delivery trucks travel across the Navajo Nation to make their deliveries to your grocery store?

A They do come up Highway 89, yes. On Highway 89—they would come up on Highway 89.

* * * *

[43] Q Do any members of the Navajo Tribe eat at your restaurant?

A Yes.

Q Do any members of the Navajo Tribe eat at your cafeteria?

A Yes.

Q Would you know where you acquired the food items that are served in your restaurant?

A I personally don't.

Q You mentioned you also operate an RV park. Do you know how many employees are assigned to the RV park?

A No, I do not.

Q Do you remember how many parking spaces you have in your RV park?

A I believe there's 35 or 40.

Q As far as facilities that you have in your RV park, what type of facilities do you have there for the RVs, the recreational vehicles that come in?

A Water, electricity and sewer.

Q Would you know how many vehicles stop in your RV park?

A No, I do not.

Q How many rooms do you have in your hotel?

A Sixty-six.

[44] Q Do you know what your average annual occupancy rate is in that motel?

A I would guess between 70 and 75 percent.

Q In your opinion, would all your guests travel across the Navajo reservation on Highways U.S. 89 or Arizona 64 to get to your motel?

A Yes.

Q Are the rooms in your motel pretty consistently equipped?

A Yes. We have four suites, which are an upgrade.

Q Would all of them have their own private bathroom?

A Yes.

Q You mentioned you have like a curio shop and a gallery. Are those the other two items, or the two types of stores you have on the property?

A Those are two that we have there.

Q What types of items do you sell in your gallery?

A The gallery is higher priced arts, Indian arts and crafts, antique bead work, baskets, textiles, along those lines, jewelry.

Q When you refer to textiles—what are you referring to when you say textiles?

A Those are Navajo rugs, Pueblo rugs, Rio Grande's and so on, Navajo wearing blankets and Pueblo wearing [45] blankets, and so on.

Q You mentioned jewelry. What are you referring to when you mention jewelry?

A That would be older pieces of Navajo, Hopi, Zuni jewelry items, bracelets, rings, necklaces, et cetera.

Q And you did mention that you used to purchase some of these arts and crafts from members of the Navajo Tribe at your Cameron store; is that correct?

A For the gallery or—not for the gallery—

Q For what? Was it for the gift shop that you purchased those items?

A That I purchased the items?

Q That you purchased arts and crafts from members of the Navajo Tribe at your Cameron store.

A Yes. For the gift shop.

Q But you indicated that you no longer do that; is that correct?

A That's correct.

Q Is that as a result of this litigation that you no longer do that?

A We were advised about two or three weeks ago to discontinue the practice.

* * * *

[46]

* * * *

Q Do you pay cash for the arts and crafts you purchased from members of the Navajo Tribe?

A Yes, we do.

Q Can you say that you paid cash for all of the arts and crafts purchased from members of the Navajo Tribe?

[47] A We would pay cash, and/or if it was their wish, if they wished to take trade, we would accommodate that.

* * * *

[48]

* * * *

Q (By Mr. Gomez) Let me rephrase the question. Did you ever make a loan to a member of the Navajo Tribe at your Cameron store or on the Navajo reservation since January 1st, 1993?

A I personally—I believe that we have probably loaned employees money.

Q So would the answer be yes?

A I would say yes.

Q Do you know if Atkinson Trading Company held a reservation business license for the Cameron Trading Post since January 1st, 1993?

A Yes.

Q Are you familiar with the Indian trader regulations for business practices on the Navajo, Hopi and Zuni reservations at 25 CFR 141 2d?

A The number you just read off, I wouldn't know exactly what that was, no.

Q I'd like you to take a look at this document. Have you ever seen that document before?

A Yes.

Q Could you describe what it is?

A It's a reservation business license.

Q Is this the reservation business license issued [49] to Atkinson Trading Company doing business as Cameron Trading Post?

A Yes.

Q And what are you licensed to sell under this license?

A Licensed to sell general merchandise, groceries, dry goods, feed, Indian arts and crafts, jewelry, curios, and operate a motel and restaurant.

Q Where at?

A At Cameron, Arizona.

Q What are the dates?

A From March 1st, 1994, to March 1st, 1999.

Q And then there is a paragraph after that. Can you read that paragraph, please?

A "In consideration of the granting of this license and by the acceptance thereof, the licensee expressly warrants that all applicable federal, state and tribal laws and regulations will be fully complied with in all respects and that authorized

annual license fees will be paid when due. Upon failure to do so, the licensee is subject to forfeiture of this license and such further action as the law and facts be justified. This license is revocable at any time pursuant to the provisions of Part 141 of Title 25 of the Code of Federal Regulations."

Q Are you aware—in processing this license, are [50] you aware of the, I don't want to mention red tape, but the steps that you would go through in getting this license processed?

A No, I'm not.

Q So would you be aware if there was an approval acquired from the Navajo Tribe to grant this license?

A No.

Q So if that was a requirement, you would not be aware of that, would you?

A No.

MR. GOMEZ: If you have no objection, we would like to introduce this as—I guess we would use a letter system for our exhibits?

* * * *

[51]

* * * *

(Note: Exhibit A admitted into evidence.)

Q (By Mr. Gomez) Do you remember how many employees you have at the Cameron location?

A Over—between 100 and 135, something like that.

Q Do you know how many of these are members of the Navajo Tribe?

A No, I don't know the actual number.

Q Do you have much of a turnover in your permanent employees?

A No, we do not.

Q Do you have some employees that have been with you for a long period of time since you have been operating the Cameron Trading Post?

A Yes.

Q Do you have any rough idea as to what that number would be?

A No.

Q How do you advertise vacant employment [52] positions?

A I don't know. That's not my position.

Q Do you have supervisors who report to you in the Cameron Trading Post?

A Yes.

Q Who would report to you from there?

A Mike Davis.

Q What position does Mike Davis hold currently?

A General manager.

Q Did you mention that Cameron Trading was opened by a person named Hubert Richardson; is that correct?

A Yes.

Q Do you know about what year that was?

A I believe it was 1916.

Q You also mentioned you had not done a title search; is that correct?

A I personally have not, no.

Q So would you know the exact date, then, when this land became fee land?

A No, I would not.

Q Would you know when the motel was opened at the Cameron Trading Post?

A No, I do not.

Q You indicated that you acquire electricity from Arizona Public Service Company?

[53] A Yes.

Q Would you know where Arizona Public Service Company produces their electricity?

* * * *

A No, I do not.

* * * *

[55]

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Q (By Mr. Gomez) You mentioned that you have your own water well, and there was an exhibit you referred to as Atkinson's Exhibit No. 2. Would you take a look at that, Mr. Atkinson?

A (Witness complies.)

Q This is a Certificate of Water Rights. Is that what you understand it to be?

A Yes.

Q And this allows you to pump up to 24 million gallons per annum for domestic?

A Yes.

Q Where do you pump this 24 million gallons, or up to that amount, from?

A Pardon?

Q Where are your water pumps located?

A They're down in the canyon beside the trading [56] post.

Q Beside the trading post?

A Yes.

Q Are they located in the river bed?

A It would maybe be on the south edge of the—it's down in the bottom of the canyon.

Q Do you know if those are located on your—on the boundaries of your property?

A Yes.

Q Have you surveyed that?

A Yes.

Q And this permit indicates you use up to 24 million gallons in a year. How many gallons of water do you use?

A We're using probably close to 22—21, 22 million right now.

Q And after you use this water, you mentioned you had a—is it a wastewater disposal plant or setup?

A It's a sewage treatment plant, yes.

Q And this is fed by the different businesses, including the motel; is that correct?

A Yes.

Q And you indicated that you discharged potable water into the Little Colorado?

A Yes.

[57] Q Do you currently have a permit to discharge that water?

A We have received notification that they were an issue, I guess. We don't currently have a discharge permit.

Q In Exhibit 2, a Certificate of Water Rights, have you ever—let me go back. Who have you received notification from that they're in the process?

A I'm not familiar with that—what they're called, someone out of San Francisco, I believe.

Q Was this a federal permit?

A I'm not familiar with that.

Q Would you know that if you were ever denied a permit by the State of Arizona to discharge?

A I wouldn't know if we ever were.

Q But you do know that you currently do not have a permit to discharge?

* * * *

Q Let's go to your garbage. This garbage—is this garbage that's generated from your store and the hotel?

[58] A Yes.

Q And your RV park?

A Yes.

Q You indicated that it's hauled off by a company out of Flagstaff?

A Yes.

Q For how many years has this company out of Flagstaff hauled off the garbage?

A Four or five years.

Q What was done with it prior to that time?

* * * *

A We took it to the local dump.

[59] Q The local dump. Would that be on the Navajo reservation?

A I believe so.

Q Are you aware that that local landfill was shut down a few years ago?

A Yes.

Q Was that about the time that you started using the company out of Flagstaff?

A Just prior, I believe. It was just prior to it being shut down.

Q You also indicated earlier that your kids in the area attend an elementary school that was operated by the State. Do you know how that elementary school was funded?

A No, I do not.

* * * *

Q (By Mr. Gomez) You also indicated that your 911 calls ring in Flagstaff. But you're not sure, are you?

[60] A That is to the best of my knowledge.

Q To the best of your knowledge. But you're not sure?

A No.

Q Would you be familiar with how many Arizona Highway Patrol individuals would be stationed in the Cameron area?

A No.

Q Would you be familiar with how many deputy sheriffs from Coconino County would be stationed in Cameron County?

A No.

Q You indicated here that a police officer, after taking into custody an individual who was breaking into vehicles on the Cameron Trading Post premises, when asked if you could

file charges said, "That wouldn't do any good." Were you present at that time?

A No, I was not.

Q Would you know the name of the Navajo Police officer who said that?

A No, I would not.

Q So you have no firsthand knowledge of that; is that correct?

A No, I do not.

Q You indicated that you buy most of your arts and [61] crafts from different vendors in New Mexico?

A Yes.

Q Where do you buy them?

A Gallup, Albuquerque, Santa Fe, Farmington, Shiprock. That's about most of them in that area.

Q You also indicated that you had filed your tax return under protest?

A Yes.

Q Is that correct?

A Yes.

Q Is this pursuant to a regulation that you filed your tax return under protest?

A I'm sorry, I don't understand.

* * * *

Q (By Mr. Gomez) Is it your understanding that the Navajo tax regulations allow a taxpayer to file a tax [62] return under protest?

A Yes.

Q Have you read the regulations?

A No.

Q You also mentioned here, in asking questions regarding the litigation with the U.S. Department of Interior, that you didn't think that the litigation was with the Navajo Nation?

A That's correct.

Q That it was—that the issue was whether you were required to obtain a trader's license?

A That's correct.

Q Was it your position in that previous litigation that your small amount of sales to members of the Navajo Tribe meant that you did not have to comply with the Indian Trader Statute?

A I just felt we shouldn't have to have an Indian trader's license for the business we were doing.

* * * *

[63]

* * * *

Q Was it your understanding that the position that you—in the Ashcroft litigation, is it your belief that you should not have to comply with the Indian Trader Statute regulations because you only made a small amount of sales to members of the Navajo Tribe?

A It was my understanding that I felt our position was that we didn't need to have an Indian trader's license because we didn't do—it was very insignificant. But we didn't need an Indian trader's license. That's what my position is.

Q The tourists that you have indicated that most of them are coming or going to the Grand Canyon, how would they know where you're located?

A The tour buses stop there. I mean, that's one way to find us. And then the only other thing we have is a few highway signs.

Q Do you have a sign at the junction of U.S. 89 and Arizona 64?

A Yes, we do.

Q On the Navajo reservation?

A Yes.

[64] Q Do you remember how long you have used that billboard to advertise on the Navajo reservation?

A Seventeen years.

Q Are you aware of any liquor being served and consumed at any time at the Cameron Trading Post or on the premises?

MR. DARLING: I would object to that question. I don't see that it's relevant to the hotel occupancy tax.

MR. GOMEZ: We feel it's relevant. Mr. Darling has taken the position that the activities occurring at the Cameron Trading Post are not a threat to the health and welfare of the Tribe. I think the serving of liquor on the Navajo reservation is a first-class threat to the health and welfare of the Navajo Tribe.

HEARING OFFICER ADAMS: You may answer.

MR. DARLING: Let me interpose another objection, I'm sorry.

HEARING OFFICER ADAMS: Sure.

MR. DARLING: One of the concerns that we have there, and the reason why I don't think that Mr. Atkinson should be required to answer that question, is because Mr. Gomez asked that question at one of the depositions of one of the witnesses. And based on that, there may be a question as to whether certain activities [65] at Cameron Trading Post in the past, which have been discontinued, may constitute a violation of federal law. And, therefore, based on U.S. Constitution, Mr. Atkinson cannot be required to answer that question.

HEARING OFFICER ADAMS: Well, as I understand your question, you're asking him if in the past have they served liquor at the Cameron Trading Post?

MR. GOMEZ: Yes.

HEARING OFFICER ADAMS: You may answer the question.

MR. DARLING: Well, I'm going to—again, I think under federal law he is not required to answer that question because of the fact that past practice may arguably constitute a violation of federal law, and I don't think he should be required to answer that question.

HEARING OFFICER ADAMS: Are you instructing Mr. Atkinson not to answer the question?

MR. DARLING: I think he has that right under the U.S. Constitution.

HEARING OFFICER ADAMS: Let's move on.

MR. DARLING: Mr. Atkinson, do you claim your right under the Federal constitution not to answer that question?

THE WITNESS: Yes, I do.

HEARING OFFICER ADAMS: Let's move on.

[66] MR. GOMEZ: May I ask what grounds that he claims that right?

MR. DARLING: Under the U.S. Constitution and Fifth Amendment.

MR. GOMEZ: Did Mr. Atkinson state that?

MR. DARLING: Is that a correct statement, Mr. Atkinson, of your refusal to answer that question?

THE WITNESS: Yes, it is.

Q (By Mr. Gomez) I'm just going to make sure I understand the reason why you're not answering the question. You're not answering this question in that you are claiming a right under the Fifth Amendment, and this is on the grounds of it might incriminate yourself or the company; is that correct?

A Yes, it is.

Q Thank you.

MR. DARLING: And let me make a statement for the record here with respect to anything that may have occurred in the past. We don't think there was any violation of any law, but to be on the safe side, we claim that right—Atkinson Trading Company claims that right.

HEARING OFFICER ADAMS: All right. Thank you. You mentioned a couple of responses to the Arizona sales tax. You mentioned that you did collect the sales tax on sales to nonmembers?

[67] A Yes.

Q But you did not collect sales tax on sales to tribal members?

A That's correct.

Q Why did you not collect sales tax on sales to tribal members—the Arizona sales tax?

A Because we were told that we shouldn't.

Q Do you know who told you?

A I believe it's in one of the regulations of the trader's license.

Q Would it be accurate to say that you do not collect the sales tax on sales to tribal members as the sale is to a member of the Tribe located on that tribal Indian reservation?

* * * *

A My understanding is that we're not to charge tax to tribal members because that's a requirement of a trader's license.

* * * *

[68]

REDIRECT EXAMINATION

BY MR. DARLING:

* * * *

Q With respect to any loans that Atkinson Trading Company has made to any of its employees, does Atkinson [69] Trading Company, or has Atkinson Trading Company ever charged interest on those loans?

A No.

Q Was that part of Atkinson Trading Company's business?

A No.

Q Why did you make loans to employees?

A They may have needed something or they had an emergency or whatever came up to assist them.

Q Did you ever do that anytime other than at the employee's request when they had a need of that sort?

A No.

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[70]

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MICHAEL DAVIS

After having been first duly sworn under oath, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. DARLING:

Q Please state your name, sir.

A Michael Calvin Davis.

Q Mr. Davis, where do you live?

[71] A Flagstaff, Arizona.

Q Are you an employee of Atkinson Trading Company?

A Yes, sir.

Q What is your position with Atkinson Trading Company?

A I'm the general manager of the Cameron operation.

Q Is that at Cameron Trading Post?

A Yes, sir.

Q How long have you held that position?

A It will be four years October 7th.

Q Are you responsible for the day-to-day operation of Cameron Trading Post?

A Yes, sir.

Q Now, describe the nature of the guests and customers that come to Cameron Trading Post.

A Well, it's a tourist business. A large majority of them come on tour buses or rental cars or their own personal vehicles.

Q While these guests are on Atkinson Trading Company property at Cameron Trading Post, what kind of activities do they engage in?

A Shopping in the gift shop and the market, eating in the dining room or cafeteria, and staying overnight in the motel.

[72] Q While they're on the property, have you ever observed any of them transacting business with the Navajo Nation or any member of the Navajo Nation?

A No, sir.

Q Are there ever any individual Navajos selling arts and crafts on Atkinson Trading Company property at Cameron?

A No, sir.

Q Now, with respect to the sewage treatment plant that Atkinson Trading Company has, there was a question as to the discharge from it. Could you explain the status of that?

A Yes, sir. We are currently operating under the old discharge permit. When it came up for renewal, there was a backlog. So at that point, ADEQ allowed us to operate under the old discharge permit until the new one was issued, which is supposedly within the next 30 days.

Q How do you attract customers and guests to stay at Cameron Trading Post?

A How do we attract customers there? Basically, it's the proximity of the Grand Canyon and the historic aspect of it.

Q Do you have a lot of repeat guests?

A Well, we have a small percentage of repeat guests. Most of the people—I mean, we have a large [73] percentage of Europeans that are coming through on tour buses, and since tour buses is the largest percent of our traffic, obviously a lot of it isn't repeat.

Q But do the same tour companies route their buses?

A Yes, sir.

Q In what other ways do you attract customers?

A Well, we have some advertising that we do with Southwest Art, American Indian Art, and billboards.

Q Do you also get word-of-mouth referrals?

A Yes, sir.

Q Does Atkinson Trading Company get—where does it get its electric power?

A APS.

Q Where does it get its phone service?

A U.S. West.

Q When you dial a 911 number, do you know where that rings?

A I'm pretty sure it rings in Flagstaff.

Q Where do you get your gas?

A Graves Butane out of Flagstaff.

Q Again, with respect to sewage treatment, where does the sewage treatment plant actually discharge?

A Its discharges on our property in the Little Colorado River.

[74] Q But the actual discharge point is on your property; is that correct?

A Yes, sir.

Q What kind of fire protection does Cameron Trading Post have?

A Basically none. We have our own fire hydrants, our fire hose that we use, we test periodically. Our maintenance crew is basically our fire department.

Q Have you had any fires since you have been there?

A One.

Q Who responded? What happened with that fire?

A Well, it was an employee housing unit located just to the south of the trading post. A fire truck came out of the Timberline Fire District in Flagstaff. We had already put the fire out prior to it getting out of hand.

Q Was there any response from either the BIA Fire Department or the Navajo Nation Fire Department?

A No.

Q Where do nonmember employees and nonmember guests, that's nonmembers of the Navajo Nation, where do

nonmember employees and nonmember guests get their medical treatment?

A Flagstaff.

Q Where do they get the emergency medical response [75] from?

A Well, I guess it would depend on how bad the emergency is. If it's an emergency, then we would call the Coconino County Sheriff's Department and they would dispatch somebody from Flagstaff.

Q Do you know who maintains Highway 89 and Highway 64?

A Arizona Department of Transportation.

Q Are those highways patrolled by the Arizona State Police?

A Yes, sir.

Q Where do nonmember employees send their children to school?

A At a young age, some of them go to the primary school there in Cameron. The majority of them go to Flagstaff. That's really the reason why I live in Flagstaff is because I have two school-age kids and I didn't want them riding the bus for two hours to school.

Q Is there a school bus that runs from Flagstaff to Cameron?

A Yes.

Q Now, the primary school in Cameron, do you know who maintains that school? Who operates that?

A The state, as far as I know.

* * * *

[81]

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Q In the market, what percent sales—well, not just the market but Cameron Trading Post, what percent of your sales are to members of the Navajo Nation?

A I don't know exact figures, but less than 1 percent.

[82]

* * * *

Q With respect to the Navajos that Atkinson Trading Company hires to work at Cameron Trading Post, what criteria do you use to determine whether to hire a particular individual or not?

A Work experience and willingness to work, basically.

[83] Q Is Atkinson Trading Company an equal opportunity employer?

A Yes, sir.

Q Do you use race, national origin, ethnicity, gender, religion as a factor or give it any sort of weight in deciding whether to hire an applicant?

A No, sir.

* * * *

CROSS-EXAMINATION

BY MR. GOMEZ.

Q You responded to some questions about the market and grocery store where you estimated about 1 percent or less of your sales are to members of the Navajo Tribe?

A Uh-huh.

Q What aspect of your business would have the highest sales to the members of the Navajo Tribe?

A As a percentage to the total department sales, it would probably be the market.

Q And these goods that you require for selling in the market, where would you acquire those?

A The majority of them come from a company called General Distributing out of Albuquerque.

Q And they deliver—do they deliver to the [84] market?

A Yes, sir.

Q Do you know if they deliver from their Albuquerque location?

A Yes.

Q So these delivery trucks would cross across the Navajo reservation to make their deliveries to the grocery store?

A Yes, sir, on U.S. 89.

Q On Interstate 40?

A Yes.

Q You also mentioned that about 70 percent of your meat processed by the butcher in the market went to your restaurant operations?

A Uh-huh.

Q Do any members of the Navajo Tribe eat at your restaurant operations?

A Yes, sir.

Q We were also looking at the motels. Do you remember how many rooms you have in that motel?

A Sixty-six.

Q Do you remember what your occupancy rate was in that motel?

A I would estimate around 70 percent.

Q To get to your motel, do people travel across [85] the Navajo reservation or Highway U.S. 89 or Arizona 64?

A Yes, sir.

Q You were asked some questions about your employees. How many employees do you have at the Cameron location?

A It varies from season to season, but right now we have around 120.

Q Is this the high season?

A Yes, sir.

Q During the low season, what would that drop down to?

A It would drop down to between 40 and 50.

Q Do you have much of a turnover in your permanent employees?

A No, sir.

Q Do you know how many of your permanent employees are members of the Navajo Tribe?

A I would estimate around 75 to 80 percent.

Q You mentioned that you were an equal opportunity employer?

A Yes, sir.

Q What is an equal opportunity employer?

A Well, we don't discriminate against anybody based on race, sex, nationality.

Q So those would be the criteria as to what you [86] understand to be the equal opportunity employer?

A Yes, sir.

Q You were talking about water disposal, and you used initials.

A Pardon me? I'm sorry.

Q On your water disposal, you mentioned ADEQ. What does that stand for?

A That's Arizona Department of Environmental Quality.

Q What is the current status of that discharge permit?

A The new one?

Q Yes.

A It's pending. I recently received a letter from the San Francisco Office with the Department of Interior.

Q Let me try to get this correct here. The discharge permit would come from the Arizona Department of Water Quality?

A Well, no, I guess—actually it's a federal issue permit.

Q Out of San Francisco, what department is handling it in San Francisco?

A Well, it's the Department of Interior Water Resources Management, I guess. I don't have the letter with me. I'm not sure exactly what the appropriate title [87] is.

Q The Department of Interior Water Resources Management. Would they be the people who would be issuing the permit, based on your understanding?

A Yes, sir.

Q Is there a tribal consent in that process?

A No.

Q Are you sure?

A Not that I'm aware of.

Q So you don't know; is that correct?

A To my understanding, no, there is no tribal consent required.

Q Did you receive a letter—did you ever apply for this water permit that we're currently talking about that's pending to the Arizona Department of Water Quality?

* * * *

[89]

* * * *

A No, I did not receive the letter from the Arizona Department of Environmental Quality. The Arizona Department of Environmental Quality knows that we have been operating under our old discharge permit. They have jurisdiction over us, but the letter came from the regional office in San Francisco that they would not be the Arizona Department of Environmental Quality.

Q Just one more question on this issue. Did you receive a letter from ADEQ telling you to go to either the Tribe or EPA for your permit?

A No.

Q Mr. Darling asked you if you ever observed tribal members selling, within the Cameron Trading Post premises, arts and crafts or any other things. Have you ever observed the members of the Navajo Tribe selling arts and crafts at any other point on the reservation?

A Yes.

Q For example, have you ever observed them sell arts and crafts near the junction of U.S. 89 and Arizona 64?

A Yes, sir.

Q You mentioned you advertised in a couple of magazines, Southwest Art, Indian Art, word of mouth. Do

you have a sign at the junction of U.S. 89, Arizona 64 on [90] Navajo trust land?

A Yes, sir.

* * * *

[91]

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Q You mentioned Highway 64 is patrolled by the Arizona State Police. Do you ever see any Navajo Police vehicles on that road?

A Sure.

[92]

* * * *

Q You mentioned you contacted the Navajo Tribe regarding some problems where you needed police protection in the Cameron area, and you talked with Officer Clarence Bilagody?

A Yes, sir.

Q When you said you contacted the Navajo Tribe, who did you contact?

A Just somebody in dispatch, and they dispatched Clarence.

Q And do you know Clarence?

A I've met him on occasion.

Q Have you ever seen Clarence drive by Cameron Trading Post?

A Not specifically that I can remember, except in instances where they responded to something that I've called them about.

Q Do you have an alarm at the Cameron Trading Post?

A Yes, sir.

Q Are you aware of Clarence ever responding to any of those alarm calls?

A Not Clarence specifically. It wouldn't surprise [93] me if he had.

* * * *

[94] Q But the Navajo Nation Police have responded to alarm calls in the past; is that correct?

A Yes, sir.

Q You mentioned that some Tribal members have stayed, during the Tuba City Fair, at your motel?

A Yes, sir.

Q And as far as where your employees reside—your Navajo employees, would it be your understanding it was on the Navajo reservation?

A I would have to say for the most part.

Q There was another question in here as to why people would come visit Cameron Trading Post, and I think you responded, one, because of its proximity to the Grand Canyon and the historic aspect of it?

A Uh-huh.

Q What do you mean by the "historic aspect of it"?

A Well, I guess in that it's one of the few remaining active old time trading posts.

Q Would it be your understanding that the Indian crafts that you sell might be a drawing card, also?

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[95]

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A I would say that's probably one aspect of the overall business.

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[96]

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LEONARD MORA

After having been first duly sworn under oath, was questioned and testified as follows:

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[99]

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Q Now, what experience—while you were the manager there, what experience did you have with response in connection with any fires? Were there any fires on the Cameron Trading Post property while you were there?

A Yes.

Q And what happened with that fire?

A They finally put it out before the—basically, we just kept the other building from burning before somebody responded.

Q Who responded to the fire?

A Somebody came out of Tuba City, and I don't remember which it was that came, one from Grand Canyon.

Q Now, the one that came from Tuba City, do you know if that was the Navajo Nation Fire Department or the BIA Fire Department?

A I don't remember.

Q When that fire happened, who did you call?

[100] A I called—if I remember correctly, I called the state police.

* * * *

[102]

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CROSS-EXAMINATION

BY MR. GOMEZ:

Q You were asked the question by Mr. Darling as to whether your guests posed a health or safety hazard to anybody and you responded—

A No.

Q In your deposition on Page 43, Line 19—Line 15, you were asked the question: "On your visitors who come to visit the Cameron Trading Post, do you monitor the activities of

your visitors while they are there?" And your answer: "What do you mean?" "Question: Did you like monitor what your visitors were doing while they were there at Cameron Trading Post?" Your response: "No."

Did you understand the question in your deposition, Mr. Mora?

A Let me get this clear. As far as like—maybe as far as whose definition of monitoring we're using, I mean, I did say that, as the manager here observing everything that's going on, but I don't police them. I [103] don't follow them unless they're causing problems, then I would monitor them. But if everything seems to be flowing properly, I don't follow them around.

Q Let me just show you the question, and then, if you can, read Line 19 at the "Q"?

A "Did you like monitor what your visitors were doing when they were there at the Cameron Trading Post?"

Q And your response was?

A "No."

Q Is that accurate?

A (No response.)

Q Is that accurate, Mr. Mora?

A Yes.

Q You also, with respect to your guests, you said that you think that they were not potentially harming the health and welfare of anybody. Have you ever seen any of your guests drink liquor at the Cameron Trading Post?

A Yes.

Q Were they served this liquor by Cameron Trading Post?

MR. DARLING: I'm going to object to that question on the same grounds that I did when Mr. Atkinson was asked that question.

HEARING OFFICER ADAMS: If you tend to—on the same grounds?

[104] MR. DARLING: Yes.

HEARING OFFICER ADAMS: I suggest you ask Mr. Mora to change the preface.

MR. DARLING: Yes. Mr. Mora, do you claim that privilege under the constitution to refuse to answer that question on behalf of Atkinson Trading Company?

A Yes.

* * * *

[105]

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Q As far as police protection at the Cameron Trading Post, is it true that you never remember any Arizona State Policeman arresting a member of the Navajo Tribe at the Cameron Trading Post?

A An Arizona State Policeman arresting one?

Q Yes.

A I remember them coming, but I don't remember them arresting anyone. I remember them coming to help us out.

Q I'd like to refer you to Page 42 of your deposition, Line 14. I asked you the question: "Were you aware of the state police ever arresting a Navajo on your premises?" What was your answer?

A "Not that I remember."

Q With respect to the fire, you indicated that you had it under control by the time a fire engine arrived from Tuba City; is that correct?

A Yes.

Q And with respect to your guests, were most of them on their way to or coming from the Grand Canyon?

A Yes.

Q Did you ever discuss the travel plans of your visitors with them?

A Through the course of years of being there, it [106] was just conversation of where they're going, what they're doing.

Q On Page 44 of your deposition, Line 3, I asked you the question: "Or did you ever discuss what the travel plans in the area were?" What was your response?

A "No."

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[109]

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FREDERICK WHITE

After having been first duly sworn under oath, was questioned and testified as follows:

[110]

DIRECT EXAMINATION

BY MR. DARLING:

Q Would you please state your name, sir.

A My name is Frederick H. White.

Q And Mr. White, are you employed by the Navajo Nation?

A Yes, I am.

Q What is your position with the Navajo Nation?

A Currently, I'm director of tourism for the Navajo Nation.

Q How long have you been director of tourism?

A Since October of 1991.

Q Does the Navajo Nation actively promote tourism?

A Yes, we do.

Q Why do you do that?

A The Navajo Nation is interested in promoting tourism to the Navajo Nation because the visitors that come to Navajo Nation bring tourism dollars. Basically, that means they spend their money here as they sightsee or recreate, visit sites, whatever.

Q Does that create jobs and revenues?

A The tourism that comes to Navajo Nation does create businesses that basically accommodate the visitors, and through that, I think they do create jobs.

Q And one of the purposes of the Navajo Nation [111] promoting tourism is to create jobs; is that right?

A Yes.

Q And also, you want to develop additional revenues for the Navajo people; is that correct?

A Yes.

Q Now, is the Navajo reservation open to the general public?

A Yes, it is.

Q Are there any restrictions on where nonmembers can go on the Navajo reservation?

A In specific areas like tribal parks, basically, visitors are not allowed in certain areas. Giving you an example would be Monument Valley. The people are restricted from accessing certain areas unless they obtain permits of some sort.

Q What is the purpose of that?

A The permit controls who goes back there to make sure that they have some sort of protection of the area. They might have special resources back there and they don't want, basically, people just to go in there by themselves. They would rather have a guide to go along with them.

And then in the case of back country, certain areas on the reservation are required to have Back Country Use Permits. And basically, that's everything off the main [112] highways. For instance, if people wanted to hike down to the Colorado River on the Navajo Nation side, they would need a Back Country Use Permit to do that.

Q Who issues those Back Country Use Permits?

A The Navajo Parks and Recreation Department.

Q Are there any other parts of the Navajo Nation that are restricted to nonmembers?

A To nonmembers?

Q Yes. Or restricted to people in general?

A To people in general? Basically, under those two categories, if it's a special park or if it's back country use, those are the only restrictions that I know of.

Q Now—I'm sorry, were you finished?

A Yes.

Q With respect to the Back Country Use Permits, are those required of both members and nonmembers?

A Yes.

Q And with respect to the permits to Monument Valley, are those required of both members and nonmembers?

A In Monument Valley or in Back Country Use Permits, there is a land user that has grazing rights, and they have customary land use of that area. Usually they are required to go into their own area, graze their sheep or check on their cattle.

[113] Q But other than—

A Other than that, nonresidents of that particular area are required to have permits.

Q And that's true whether they're a member of the Navajo Nation or not; is that correct?

A That's the way it is, yes, sir.

Q Now, other than Monument Valley, are there any other special parks?

A The Navajo Nation has 10 tribal park areas—parks and recreation areas, and there are also national parks and monuments within the Navajo Nation that have special requirements, and I think Special Use Permits are required.

Q Now, let's talk about the Navajo Nation of parks for a moment. Can you tell me which ones those are?

A Each one?

Q Well, as many as you can remember. I'm not trying to give you a pop quiz. I just want to get some examples.

A Okay. We have Lake Powell Tribal Park, Grand Canyon Tribal Park. We have Monument Valley Tribal Park,

Asaayi Tribal Park, Kinlichee Tribal Park, the Little Colorado River Gorge. Those are the only ones I can remember.

Q Now, you know, as I understand it when you go [114] into, say, the Grand Canyon National Park, you pay a fee and get a permit to go in there from the federal government; is that correct?

A Into Grand Canyon?

Q Yes.

A I'm not familiar with that.

Q Well, I guess what I'm trying to get at is the permits and the fees that you charge to go into the tribal parks; are those similar to the permits and fees that the federal government charges to access national parks?

A I would say they are, yes. They have the same purpose.

Q Is there any restriction on driving along the principal highways of the Navajo Nation?

A No. I don't know if there are. You mean, like anywhere on the reservation?

Q Right.

A No.

Q And, you know, in particular, are there any restrictions on driving on U.S. Highway 89 throughout the Navajo Nation?

A Not driving along the highway, no, other than health and safety laws.

Q Like speed limit?

A Yes.

[115] Q Okay. Now, is there any restriction on driving on Arizona Highway 64 from the Grand Canyon to the junction with Highway 89?

A I think along 89—I mean 64, there's some park regulations that might apply as far as vending is concerned.

Q As far as vending?

A Selling arts and crafts along the highway. And I think that might apply, as I remember, on Highway 89, too. I know

there was an effort, oh, several years ago, I don't remember exactly when, the state—it was the Department of Transportation and the Tribe and the Chapter tried to work out some policies regarding arts and crafts vending along the highways.

Q So would that apply to sales of arts and crafts by members of the Navajo Nation along the highway?

A That was just primarily having to do with their safety, and then the vending, having a business along the road that caused problems with the traffic, people stopping, not having adequate infrastructure in place to make it safe and sanitary for the sales area and so forth.

Q The area where I-40 traverses the Navajo Nation, are there any restrictions on anyone driving along I-40 across the Navajo reservation?

A Not that I know of.

[116] Q Does the Navajo Nation impose any regulations or restrictions on visitors who come to the Navajo Nation?

A Just the ones that I'm familiar with or aware of would be the ones that resources—I mean that the Navajo Tribal Council pass that might relate to visitation of park areas and visitation of camping and back country areas, hiking and so forth.

Q Now, you mentioned a couple of minutes ago about the national parks and national monuments within the Navajo Nation. Are those administered by the National Park Service?

A Yes. The ones within the Navajo Nation have all of them.

Q Would those include Canyon de Chelly, Chaco Canyon National Historical Park?

A Yes.

Q Hubble Trading Post National Historical Park?

A Yes.

Q Navajo National Monument?

A Yes.

Q And Rainbow Bridge National Monument?

A Yes.

Q Let me hand you this book, and let me have you turn to Exhibit No. 5 in that book. Do you recognize the cover page of that publication?

[117] A Yes.

Q What is that?

A It looks like Window Rock.

Q But what is the publication? I'm sorry.

A Okay. This is a Fax—a Navajo Nation Fax '93. I guess it's a compilation of information, statistical information.

Q Would you turn over to the third page of that exhibit, which is actually Page 127 of that book. Does that indicate—on the top part of that, does that indicate the various parks located on the Navajo Nation?

A And also some national monuments. I think these are adjacent to our—or within the Navajo Nation as well.

Q Now, the ones with an asterisk by the left-hand side, is it correct that those are within the Navajo Nation, except for Monument Valley, they are not under Navajo government jurisdiction?

A Yes.

Q Now, what is the National Navajo Nation Tourism Fund?

A What is it?

Q Yes.

A The Navajo Nation Tourism Fund was established by the Navajo Tribal Council, and the fund would be an [118] account that would be receiving revenues directly from the hotel occupancy tax.

Q So this is the fund that is used to—the money from the hotel occupancy tax goes into this fund and this fund is used for certain purposes; is that correct?

A Right. It's used for specific purposes.

Q And what are those specific purposes?

A Just by memorizing—not memorizing, but remembering the tribal council action and the resolution, it states that the tourism fund would be established to promote and develop tourism within the Navajo Nation at a local level.

Q Now, isn't it true that the Navajo Nation was spending money on tourism, developing tourism before the tourism fund was set up?

A Yes.

Q Let me show you this exhibit, and I don't have this in my book. Let me mark this as Exhibit No. 11. This is the part of the budget that has to do with the tourism department for Fiscal Year 1993; is that correct? I think some of the pages might have gotten upside down, I'm sorry.

A Yeah. This is it.

Q Now, this was the year before the hotel occupancy tax came into effect; is that correct?

[119] A Yes, I think so.

Q And during that year, during 19—well, the proposed budget for 1993 shows $403,000; is that correct?

A Yes.

Q And for 1992 it was $370,000, in round numbers; is that correct?

A 1992?

Q Yeah. If you look in the—okay. By the way, I'd like to point out and ask if this is correct, on the upper left-hand corner. The purpose was to increase tourism expenditures on the Navajo Nation by 10 percent?

A Uh-huh.

Q Again, the Navajo Nation looks on tourism as a positive thing; is that correct?

A Yes.

Q Now, if you look at the third page of that exhibit, that shows that the tourism department has eight employees; is that correct?

A Yes.

Q And about $300,000 out of the some $400,000 budget goes to personnel expenses, either direct expenses or fringe; is that correct?

A Yes.

Q Now, let me show you what I'll mark as Exhibit No. 12. Now, Exhibit No. 12 is for the Fiscal Year 1995; [120] is that correct?

A Yes.

Q And that shows a proposed budget of $700,000; is that correct?

A Yes.

Q Now, that $700,000, that is the expected revenue or anticipated revenue from the hotel occupancy tax; is that correct?

A This is projections given to us by Financial Services, and that authorizes us to budget for $700,000. And the revenues—as far as revenues are concerned, this 700 is less than the general revenues. I mean, the revenues that were expected.

Q I'm sorry, have you gotten more or less than the 700,000, as far as you know?

A Oh, we got 700,000. I was just telling you that it says it's for the full amount.

Q The hotel tax has generated more money than this; is that correct?

A Yes.

Q Where has the rest of that money gone?

A By tribal laws, 22 percent is put into two different accounts.

Q What accounts are those?

A I'm not sure exactly. One of them has to do [121] with—to ensure money is there for litigation. The other account is a trust fund, I think.

Q What's the purpose of that trust fund?

A That goes into the general revenue's general fund.

Q Now, looking at the specifics on this 1995 budget, the purpose is to make the Navajo Nation a prime worldwide destination that would create jobs and revenues for the Navajo people. So again, you know, promoting tourism is considered to be a positive thing in 1995; is that correct?

A Yes.

Q Now, looking at the personal services category, that's approximately the same as it was in 1993, is it not?

A Yes.

Q And if you look at Page 3 of that exhibit, you've still got eight employees in the tourism department, do you not?

A Yes.

Q And salaries and fringes are still right around $300,000, isn't that correct?

A Yes.

Q So, is it true to say that what you have done is to replace general funds—general Navajo Nation funds [122] with the hotel occupancy tax funds; is that correct?

A Yes.

Q Now, the only thing that I see here, and correct me if I'm wrong, the only thing that I see here that's in addition to the monies that the Navajo Nation was already spending on developing tourism is in the category of capital expenditures; is that correct?

A Yes.

Q Other than capital expenditures, the expenditures projected for 1995 are slightly less than $400,000; is that correct?

A Yes.

Q And in 1993, you spent approximately $400,000; is that correct?

A Yes.

Q Now, the capital expenditures that you got slated, that is for vendor villages, is that correct, the construction of vendor villages?

A Yes.

Q What are vendor villages?

A Vendor villages are facilities that would basically do two things. Number one is that it would provide for visitor services, and second it would provide for small business development.

Q Have you built any vendor villages yet?

[123] A Yes, we have.

Q Where is that?

A In Kayenta, Arizona.

Q Is that open yet?

A Yes, we opened that up.

Q When did you open it?

A In June.

Q Are any non-Navajo vendors allowed to rent spaces there?

A Let's see, non-Navajo vendors? I don't think we had any non-Navajo vendors ask us to sell there. But we are primarily targeting local Navajo arts and crafts.

Q So the purpose of it is to promote the ability of local people to sell their arts and crafts?

A Yes.

Q Is there a preference for non-Navajo—I mean, for Navajo vendors over nonmember vendors?

A What we're trying to do is bring the folks that are along highways into the vendor villages since they're safe. It's a much safer environment. And at the same time we want to bring the visitor there, and they would be able to get their visitor service needs met.

Q But my question was: Is there a preference for renting spaces in the vendor village to Navajos as opposed to non-Navajo?

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[124] A I would think so.

MR. DARLING: That's all the questions I have.

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[125]

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HEARING OFFICER ADAMS: Well, I'm not going to ask that you submit the entire Navajo Nation budget for these two periods. We will accept these two documents as they have been introduced. If you have any additional questions about the budget procedures, you can submit it. You can present that portion of the budget and ask to testify on that. The Navajo Nation Fax Booklet is an official document under the Economic Development Division, and it is a private practice. And I think I indicated in one of the documents that I sent to you that we will take official notice of the documents other than that official document of the Navajo Nation. So I will take official notice of the entire booklet for this purpose.

[126]

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CROSS-EXAMINATION

BY MR. GOMEZ:

Q Mr. White, with respect to the vendor villages that Mr. Darling asked you about, was the major reason establishing these vendor villages to make it safer to sell these arts and crafts and other goods than selling them on the highway?

A That's a part of the reason, yeah. I would say that it's part of it. Can I elaborate?

Q Yes.

A The reason why I say that is because besides having our vendors off the main highways, in the right-of-ways that they are in now, we would like them to be in a facility that's nicer, that would accommodate their needs. On the other hand, we want the visitors that come to the Navajo Nation to have a better visit by having clean bathrooms and information available for them as to where they're going to be going or if they have questions on the Navajo Nation. When we do that,

at the same time, we feel that the local people and the visitors would both benefit at the same time because the vendors would then have their market that they could sell their arts and [127] crafts. So I would say there are two reasons.

Q In Exhibit No. 5, this is Page 127 of the Navajo Nation Fax '93, Mr. Darling asked you the question about some of the parts in there like Canyon de Chelly, Chaco Culture National Park, Hubble, Monument Valley, Navajo National Monument and Rainbow Bridge. The note at the bottom said, "Those situated within the Navajo Nation"; Hubble, Monument Valley, Tribal Park is under Navajo government jurisdiction. So you take that to mean that only the Navajo—the Monument Valley Tribal Park is operated by the Navajo Nation? Is that your understanding of what that says?

A My understanding is that the Navajo Nation owns Monument Valley and these national parks are monuments. All these that are within the Navajo Nation are owned by the National Park Service except Canyon de Chelly National Monument and a portion of the Navajo National Monument.

Q But those others, with the exception of Monument Valley, are operated by the National Park Service; is that correct?

A Yes.

Q Just to make sure that we're talking about the same budget here. What I'm going to show you is the resolution of the Budget and Finance Committee of the Navajo Nation Council, which is page—can you just read [128] the heading of that?

A "Recommending approval of the Fiscal Year 1995 Navajo Nation Budget and other Related Actions to the Navajo Nation Council."

Q Have you seen this document before in your work?

A The resolution?

Q The resolution and the following attached budget.

A I've seen this resolution.

Q Turn now to Page 395. Take a look at that page. Is that the same page that Mr. Darling asked you to take a look at earlier that has been introduced as Exhibit 12?

A Yes.

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[129]

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(Note: Exhibit B admitted into evidence.)

Q (By Mr. Gomez) In this—if you can open it to Page 395. Do you want to describe the duties and services that your department provides?

A Describe it?

Q Yes.

A Basically, the tourism department provides information to people that want to visit the Navajo Nation, and we provide them information to try to answer the questions they would have, depending if it's on recreation or if it's sightseeing and so on, parks and [130] rec, tourism activities, cultural, whatever. And in addition to that, we also want to market the Navajo Nation to bring new tourism dollars into the Navajo Nation. And in addition to that, what we want to do is to develop the tourism facilities, goods and services that do not exist now to better accommodate the visitors that come to Navajo Nation. So essentially, those are the three.

Q Do you serve the entire Navajo Nation?

A Yes, we do.

Q Is your office involved with the state, county or federal providers of tourism services?

A Yes. We work with the Arizona and New Mexico tourism offices. We do projects with them, such as familiarization tours for potential new business to Navajo Nation, familiarization education of tours for travel riders. It's just basically to promote the Navajo Nation through the state partnerships. We also work with other organizations as well.

Q As far as attracting visitors, what are the goals that your office is working toward in the way of service for tourists and other visitors?

A What are the goals?

Q Yes.

A Now?

Q Yes.

[131] A Existing goals?

Q Yes.

A At this time, we're working on several projects, and one I can categorize as vendor villages, visitor centers. Basically, we're working on Cameron, Arizona; Monument Valley; Utah; Shiprock, New Mexico; Chinle, Arizona. These projects are within what we feel is the heavy-use areas of the Navajo Nation as far as tourism where we would like to provide the goals and objectives of the vendor villages. We also have ongoing visitor services that we do at our department and that is answering all the inquiries that we get through mail or telephone, and that basically is sending out brochures, informational packets out to people that are answering questions or that—not answering questions but wanting ideas to plan for their itinerary, their trip out here. We also are working on motel development in Monument Valley. We also have another recreational vehicle park that we're working on in Ganado. So basically, that's what we're doing right now is following through with those projects.

Q Are you aware of your office ever performing a study to determine who's visiting out here regarding these tourists?

A Yes. I'm aware that a study was done prior to [132] my directorship at the tourism office. And, yes, that was done in 1990, or something like that.

Q Now, I'm going to hand you what we'll refer to as Exhibit C.

MR. DARLING: Do I have the same thing?

MR. GOMEZ: Yes. That's just the front and back.

Q (By Mr. Gomez) Is this the study you're referring to?

A Yes.

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Q (By Mr. Gomez) If you would turn to the first page there and tell us what the purpose of the survey was for.

A The purpose of the survey was to assess a demographic profile of Navajo land visitors.

Q I'd like you to just maybe go to some of the questions in the survey. One was—okay, based on the survey, what was the major consideration of selecting Navajo land for the visit?

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[137]

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MR. GOMEZ: Okay.

Q (By Mr. Gomez) I'd like to ask you to go through some of those questions that they ask there. The first one is: "QUESTION: Based on the survey, what was the major consideration for selecting Navajo land for a visit"?

MR. DARLING: What page is that on?

THE WITNESS: It's Question 3.

MR. GOMEZ: It's Question No. 3.

MR. DARLING: Okay. I see that.

Q Would you look at that question, Mr. White, and, based on the survey, what was the major consideration for selecting Navajo land for the visit?

A The people that responded said that they wanted to see historical sites, 68.26 percent. The other group was 51. Well, the next highest category is Indian culture experience, I guess, and the other was arts and crafts. Outdoor recreation came in after that. Then the next category was people that did business or was visiting a relative or friends, and then the special events was last. But the four highest ones are

historical sites, then Indian culture, then arts and crafts and outdoor recreation.

Q Could you go on to the next question there [138] that's about three or four pages down?

A Question 4?

Q Question 4. What other sites do these visitors plan to visit?

A They responded, again, the highest was people who came to visit. They wanted to see the Grand Canyon, then after that, Canyon de Chelly. The next two highest categories are Mesa Verde first, and then Monument Valley, and then Four Corners. The next is Window Rock and Chaco Canyon followed by Petrified Forest.

Q The last question, I think it's one question away. It's Question No. 7.

A "How long do you plan to stay on Navajo land?"

Q Yes. The question is: "How long do most of the visitors stay?" What are the responses to that?

A People are staying one day at the most. The next response was two days. And then right after that was three to five days, and then six or more days is the last category.

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[139]

(Note: Exhibit C admitted into evidence.)

Q (By Mr. Gomez) Going back to the '95 budget. If all the Navajo Nation general funding revenues for your program were cut, would there be an adverse impact on your department's ability to provide services at the current level?

A Yes.

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[142]

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CLARENCE BILAGODY

After having been first duly sworn under oath, was questioned and testified as follows:

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[143]

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Q What did you do before the five-month period that you're talking about? Where were you before that?

A I was stationed in the Tuba City Police District, actually stationed in a substation in the Cameron community.

Q Can you tell us if there is anyone there now at the place that you described?

A Yes, there is. To my understanding, my knowledge, there are two—actually, three police officers that are stationed out there. Do I need to give names?

Q Yes, if you would. If you know them.

A To my knowledge, Officer Jerome Dennison, who was also stationed out there when I was out there. But recently there is also Officer Leonard Williams, and [144] there's another officer, I don't know that officer's name, that recently graduated from the police academy.

Q Can you give a description of that district that you're talking about, the Cameron area district that that substation serves?

A The Cameron substation area is considered part of the southern portion of the substation and there is also what we call the northern substation. And the southern area that Cameron is in stretches all the way down from the Cameron community south all the way down to the reservation boundary which is Grey Mountain. It'll go east as far as it gets to Dilkon District and the Hopi reservation, crossing on the south side of the Little Colorado River, and also on the north side of the Little Colorado River, stretching north up to the Tuba City junction area, and it could be as far away as the gap. It'll stretch around to the west, toward the Grand Canyon, the actual canyon area of the reservation boundary

line west to the park boundary and come back around to the Grey Mountain area.

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Q (By Ms. Tapahe) Can you describe the police operations that you performed in that district when you were stationed there?

A There are many jobs that I've done in that particular area, not only myself but other officers that have been stationed out there, or officers from the local district is what we call them. As far as responding to [146] calls, we've gone to calls for disturbances within the Cameron community itself. Not only there but the highways. It's actually the whole Cameron southern substation area; accident calls, fire calls, panhandling calls within certain business establishments. We've had other calls of service, even down to providing directions for a lot of the tourists that come through there.

It's an area for tourists because they go through to the Grand Canyon and up to the Lake Powell/Page area. That's the main area for tourism, to even getting down to providing directions for these tourists.

Q Now, you mentioned responses to calls and accidents, fires. Can you elaborate a little bit on that?

A We've had accidents along the area within Cameron and as far as Grey Mountain, through that whole area up towards the Tuba City local district boundary line. We've had accidents at the 64 and 89 junction that goes to Grand Canyon. We have also had car accidents that have occurred at the turnoff into the Cameron Trading Post and the trailer court lot there. We've had accidents down north of there as well that we responded to.

Q Can you tell us what kind of individuals were involved in these accidents?

A At times we've had Native Americans. We've also had non-Indians who have been involved in these [147] accidents. Like I said, the main attraction out there is tourism. When you have that, we do have a lot of accidents that involve non-Indians who are tourists.

Q Can you elaborate on responses to calls concerning fires out there? You mentioned that you provide service?

A We've had a lot of fires in that area. Well, not—I would say a lot for that community, for the Cameron community, not there but elsewhere. We've had the most recent fire, when I was there, I remember was a fire that had occurred up at the—one of the employee's residence within the trading post compound. We had the porch and a mattress and some other property that was damaged on the porch area. I was called to that scene of the fire. By the time I got there, the people who had lived there put it out.

Q Can you describe any other officers who were Navajo Nation officials who had responded to that fire?

A Because Cameron is in an area that's out pretty much in a remote area, the nearest fire department or ambulance service that responds to any emergency calls involving accidents or fires, you have the Navajo Nation EMS for medical services respond to these calls involving accidents or fire. We also have the Navajo Nation Fire Department Rescue, and the Navajo Nation Fire Fighters [148] respond to any calls of emergency out there that involves accidents or fires. And even for this last incident that I told you about that I responded to out in the trading post compound, the Navajo Nation Fire Department responded to that.

Q All right. Now, if you know, describe how long the substation that you're talking about has been in operation in that area.

A To my knowledge, I've been with the police department for 11 years, and that substation there has been in existence since then. I know of officers that have been stationed out there prior to me coming on 11 years ago. I

don't know exactly how long it's been out there, but it was more than 11 years.

Q Okay. Back to your specific responses to calls, could you describe the state or county presence or the state or county response to these calls?

A To my knowledge, me being a Navajo Nation Police Officer, we respond to a majority of the calls there. As far as I've been working, I've had the state police, which is the highway patrol, come to back me up if I had problems either on the highway or within the trading post compound. I've never seen Coconino County, which would be the Coconino County—the only sheriff's department in that area would be Coconino County. The times that I have [149] been stationed out there I've never seen the county officer within that area. You see them sometimes on the highway a little bit, and the majority of his time would be spent in Tuba City, and that's where he was stationed out of.

Q Now, with respect specifically to the Atkinson Trading Post, the Cameron Trading Post property, can you describe the times that you have seen a state or county police officer?

A I worked a lot with the state patrol officers, the highway patrol, and a lot of times we would meet there to discuss some of the issues that would be going on. The majority of the times the highway patrol would be going to the area either to check their mail or go to the restaurant to have lunch or dinner, and a lot of times we would meet there. But that's the only time, pretty much, or when they would come to back me up on a call.

Q Describe how that works. Say someone dials 911, describe how the call comes to you.

A Since we are the primary law enforcement agency out there and the Navajo Nation has got a substation there, even the county knows this, and also the state highway patrol, if someone dials 911, to my understanding, we have had a problem with that because I think it's NCC that serves the

Navajo Nation. But there's some areas [150] within the Navajo Nation that are served by other telephone companies, and I know there is a problem as far as trying to get 911 situated because Cameron area is served by a telephone company out of Flagstaff area.

Q But do the calls eventually go to you—

A Yes.

Q —personally, or to the—

A The 911—to my understanding, when someone dials 911, it will either go to the county or the state, most likely the county.

Q What happens at that point?

A The county would go ahead and refer that call to our dispatcher by dialing our number and patching it through to the person who's calling, and that's how the dispatcher would get ahold of us and call us out to this call.

Q In answering calls, do you distinguish between Navajo Nation trust land and non-Navajo trust land? Do you make any distinction there when you answer calls?

A I don't. I really don't think it's—or when I take a call, I take it as if we were the primary law enforcement agency there. I wouldn't question whether it's my call or somebody else's call.

Q Is that the general policy as far as the Navajo Nation Police Department?

[151] A Right.

Q I see. Let's talk about, not specific incidents, but routine policies, routine actions on your part. Can you describe the routine—you're general routine in that area, in the Cameron area specifically near the trading post?

A When I was stationed there, because a lot of tourists and a lot of people go to that trading post compound because you have got the post office, you've also got the trading post, you've got also the trading post store and restaurant, and you've got the motel area. I've always considered that place that, and when I come on duty, I need to at least drive through

there at least once or twice to make a security check, and I make my rounds through there. Not only that, but at the same time, to get familiar with a lot of people there, the security officers that are working there at nighttime. It seems like where everything was happening, so that's where I would go. The RV park across the road, the same thing, and also the residences across the road which is also, from my understanding, part of the Atkinson area.

Q Could you give an estimate, say, daily, weekly, of the number of times you make routine patrols and routine security checks of that Cameron Trading Post area?

A Forty hours a week I'd say, probably, at least [152] my average going through that area would be at least twice per my shift. So it would be twice on a daily basis out of five days, so it would be 10 times that. That would be the average.

Q Now, let's talk about responses to the alarm. There's been testimony today regarding an alarm system at the Cameron Trading Post. Can you describe times when you had responded to that alarm going off?

A There are numerous times that I have responded to the alarm calls there at the trading post. There has been other times where I'm off duty but I'm subject to call where I've been called by my dispatch, paged up because the alarm has gone off. Most of the time it's at night, late at night between the hours of 11, 12, 1, 2, 3 o'clock in the morning. There was one time, I remember this, because it was an ongoing thing, the alarms coming on and every time I responded, all of them were false alarm calls. The one that really sticks in my mind is because I had gone down there real early in the morning, and we found out that it was a cat that had gotten into the attic. So there are numerous times, or a lot of times that I have been down there for these alarm calls.

Q Can you give an estimate as to the number of false alarms compared to the number of legitimate calls resulting from the alarm?

[153] A All of them were false alarms.

Q I see.

A It's not where anybody has broken into the place, that I have knowledge of.

Q I see. But you have responded, nevertheless, on a consistent basis to those calls?

A Yes.

Q Are you aware of any other officers, other than Navajo Police Officers who have routinely patrolled that 10 area?

A Yes. The time that I was stationed there, there was another officer by the name of Jerome Dennison who was also in that area, but he did not live in Cameron at the tour of duty, that was responsibility of that area. He 16 would be responsible for that Cameron area.

Q Is he a Navajo police officer?

A Yes, he is.

Q My question was: If there were other officers other than Navajo police officers; state, county or federal officers who routinely patrol and perform security checks?

A Not to my knowledge.

Q All right. Are you aware of any substations similar to the Navajo substation that are operated by [154] state or county government in that area?

A Not to my knowledge, no, not in the Cameron area. There is no other substation besides the Navajo Nation.

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CROSS-EXAMINATION

BY MR. DARLING:

Q Officer Bilagody, you're cross-deputized in the state of Arizona; is that correct?

A Yes, I am.

Q So you're deputized both as an Arizona police [155] officer, and also a Navajo Nation Police Officer, correct?

A Also New Mexico.

Q Also New Mexico. Now, when you're dealing with a nonmember of the Navajo Nation and you arrest that nonmember, you don't take them to Tuba City, do you?

A At times we do, yes.

Q But basically you put on your Arizona hat and take them down to Flagstaff, isn't that correct, the Coconino County Sheriff's Office?

A Yes, sir.

Q And, in fact, with your cross deputization, you're authorized to give tickets and to arrest people even off the Navajo Nation, are you not?

A Can you ask that question again?

Q Okay. Being cross-deputized in Arizona, you can arrest people and give people tickets, members or nonmembers off the Navajo reservation, can you not?

A Yes.

Q Now, how you react to a particular person depends on whether they're Navajo or non-Navajo, is it not?

A Can you ask that question again?

Q Well, let me nail it down a little bit more for you. If you see somebody committing a crime, and let's say it's a felony, you react to that person differently if [156] they're a Navajo or a non-Navajo, do you not?

A At times, yes.

Q Now, the Navajo Nation Police Department has a different process for Navajos or non-Navajos, do they not?

A At times, yes, because we always have the federal statutes that we could apply to both Navajo and non-Navajo—non-Indians.

Q Let's make that distinction. If you have a non-Indian who commits a crime on the reservation, that would constitute a felony?

A Right. We're talking about felonies?

Q Right. Let's talk about felonies. You would take that person to—one way or another, you would turn that person

over to the county authorities and the state authorities, would you not?

A In some cases, yes.

Q What cases would you not?

A There are some cases there that we need to handle right away, if we can't get a county officer out there. If we can't get a state officer out there, we'll take it. In most cases, we'll take a lot of the calls.

Q Yes. But what I mean is if you respond to a call and you make a determination that a non-Indian has committed a felony, you arrest them and you take them to the Coconino County Sheriff's Department, do you not?

[157] A Like I said, on some cases we do.

Q And what cases do you not do that?

A Well, it would depend on—what I'm trying to tell you is that we also have jurisdiction with the U.S. Government. So, you know, when you're talking about felonies, we could go either state or we could go to the federal government statutes. That's what I'm telling you. But we won't arrest a non-Indian on tribal charges.

Q That's right. You will not arrest a non-Indian on tribal charges. Now, do you remember me taking your deposition on March 14th, 1995, and on Page 24 asking you these questions and you giving these answers, starting on Page 24, Line 7.

"QUESTION: When you arrest a non-Native American in the Cameron community, what do you do with them? Where do you take them?

"ANSWER: We take them to Coconino County Jail."

Do you recall that question and answer?

A Yeah, probably.

Q Now, if it's a Navajo or other Indian that you arrest on what you consider to be a felony, you take them to the Tuba City jail; is that correct?

A Right. Unless there is a warrant for them we take them sometimes straight to the county jail.

[158] Q Okay. And that's if there is a warrant from where?

A The U.S. Government, the federal court system.

Q But if you observe somebody committing a crime you consider to be a felony who is a Native American, you take them to the Tuba City jail, do you not?

A Right.

Q And they go through the Navajo system rather than the state system; is that correct?

A Right.

Q Now, can the Navajo system prosecute Native Americans for felony crimes?

A No.

Q Where are those felony crimes prosecuted?

A Within the federal court system.

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DICKEY BAIN

After having been first duly sworn under oath, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. GOMEZ.

Q Would you please state your full name.

A Dickey Bain.

Q What is your present occupation?

A I work for the fire department as a fire fighter—well, fire chief right now. That's my title.

Q What is your official business address?

A Navajo Nation Fire and Rescue, P.O. Box 3066, I believe, Window Rock, Arizona.

Q How long have you been employed in your present position?

A You mean a fire chief's position?

Q Yes.

A I don't know what the PAF is through, but fire [165] chief for Navajo Nation back in '84 to '90, demoted to fire captain, and now I'm returning to fire chief.

Q When you were fire chief the first time, what did you do before that?

A Well, I was assistant from '82 to '84. And then before that I was in the military, U.S. Air Force, from '69 to '76 with their fire protection, also.

Q And would you please describe your educational background?

A Well, basically I finished high school and then went into the military and picked up the career in the fire service, and that's where I've been.

Q You mentioned you picked up a career in the fire service, was that in the military?

A Yes. That's where I started in the fire service.

Q I'm going to ask you to take a look at what's been identified as exhibit—this is the Navajo Nation budget. Is that our Exhibit B?

HEARING OFFICER ADAMS: B.

MR. GOMEZ: All right.

Q I'm going to ask you to look at Page 877.

A (Witness complies.)

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[167]

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Q (By Mr. Gomez) Mr. Bain, under this budget, what is the purpose of the Navajo Nation Fire and Rescue Services?

A To provide fire protection on the Navajo Nation.

Q Could you describe, in general terms, what the Navajo Nation Fire Department—its operations?

A What they do as far as the operations?

Q Yes.

A We provide fire suppression and rescue, and a lot of the other rescue calls or emergencies that occur on the Navajo Nation. We have stations throughout the reservation like in, oh, Chinle, Kayenta, Window Rock, Fort Defiance and Tuba City, and they all respond out without any mileage limitation. We go out as far as, you know, within the reservation, where we're requested to go by anybody that's, you know, called in for assistance. Basically, to all the services of emergency cases, we're normally the first one contacted for any assistance like that.

Q Do you know where Cameron, Arizona, is located?

A Yes, I do. It's north of Flagstaff.

Q Do you know which Navajo Nation fire station [168] would serve the Cameron area?

A As I mentioned, I have Tuba City, which is District 4, as stationed into the city with the fire station, and a couple of fire trucks and a rescue unit.

Q As far as the services you provide, are they available to anyone who calls on Navajo Nation Fire Department?

A It's available to anybody that calls us, that we're called for an emergency. We respond to any situation to anybody, to assist anybody that calls the department.

Q Are you aware of any state or county fire stations located on the Navajo reservation in Arizona?

A On the Navajo Nation there's one, Ganado Fire District.

Q Is that the only one you're aware of?

A That's the only one I'm aware of, yes.

Q Are you aware if the Navajo Nation Fire Department has ever responded to a call from a tourist traveling across the Navajo Nation?

A Yes, many times. We've got tourist attractions in Chinle and Kayenta and Tuba City, and through here we get a lot of calls, yes.

Q When you respond to calls, do you distinguish between fee land or tribal trust land in answering calls?

[169] A No, we don't. In fact, we even respond out of our jurisdiction at times to assist in an emergency.

Q For somebody calling for like a fire department in Cameron, do you know what that number would be—that phone number would be in Cameron?

A It's the Tuba City Police Department, 283-3111, I believe. The Tuba City Police Department is where all the traffic is received. If the county, the sheriff or some other entity of law enforcement comes upon any kind of emergency, they usually refer it to—someone like the Arizona State DPS has a direct—or radio frequency or radio channel and there you can actually call Tuba City right off. Then they call our fire station.

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Q Are you aware of any agreement with other providers in the Cameron area?

A Mutual agreement?

Q Yes.

A No, we don't, not that we're aware of. We don't have any agreement with any other fire department or agencies as far as combining services to respond into Cameron. But there are volunteers and other state districts in the Flagstaff area, but we're the primary response into Cameron at this time.

Q Would you describe any nonemergency services that your department provides within the Navajo Nation?

A Besides the fire suppression and rescue, yes, we do have public education with the schools, with the general public, fire prevention inspections, some [171] training, and so on and so on. We do provide nonemergency service.

Q Just referring back to Page 877 and that budget. Is all of your funding from Navajo Nation general funds?

A Yes. Entirely all our funds are general funds.

Q So if all the Navajo Nation general funding was cut, would there be an impact on your department's ability to provide services at the current level?

A There would be, yes. It would curtail some of our responses; cut down, cut back, you know, that's probably what we would have to do. But overall, we try to—the last thing we want to wash out is the accrual, you might say, just to maintain minimum level and still respond, you know, to these emergencies.

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CROSS-EXAMINATION

BY MR. DARLING:

Q Mr. Bain, you said a minute ago that you had, and by "you," I mean the Navajo Nation Fire Department, have 20 to 25 paid and volunteer individuals at each station; is that correct?

A Yes.

Q How many of those people at the Tuba City [172] substation are paid and how many are volunteer?

A I have one paid and the other 99, whatever it is, is volunteer.

Q So there's only one full-time paid person at Tuba City; is that correct?

A Yes, with our department. We combine services with the Tuba City Bureau of Indian Affairs, also. So we have that available also to cover our area.

Q Well, we'll ask about BIA services in a minute. Now, with respect to your, and by "your," again, I mean the Navajo Nation Fire Department in Tuba City, you've got one paid person and then how many volunteers do you have?

A Anywhere from 20 to 24, I would guess.

Q Now, you say that your fire fighters are certified as Fire Fighter I and Fire Fighter II. Do all the volunteers have certification?

A No, we don't, not at this time. We have in-service training, but we have some people that are in the process of going through the training.

Q Does your training budget show up somewhere else in the Navajo budget?

A Training budget?

Q Yes. If you would look, please, at the Fire Protection Budget starting on Page 877.

A Yes.

[173] Q In the upper left-hand corner under "Expenditure Categories," we've got Personal Services, Travel and Per Diem, Supplies, Lease Rental, Utilities, Repair and Maintenance and CONT Services and Special Items. I don't know exactly what that is. Is training contained in one of those categories or is it in a separate place?

A If you go to 878—

Q Okay. Let's go to 878.

A —it breaks down more in detail the 2200 account, and Personal Travel Expense usually covers the expense in that area to allow people to travel and attend training.

Q So your budget for this year for training would be included in that number of $4,960?

A Yes. And the 2100 that were assigned vehicles, we use assigned vehicles to transport personnel down to the training sites.

Q Now, as I understand it, when a call comes into the Tuba City Police Department—first a call has to come into the Tuba City Police Department for you to have any hope of getting a call and responding to it; is that correct?

A Yes. Most all our paging is done by the police department.

Q And then the Tuba City Police Department will [174] call you and they'll call the BIA Fire Department, will they not?

A Yes.

Q And then, if they call you, and when I say "you," again, the personnel that you have on site, they will send out, how do they contact the volunteers to come in and respond?

A Each person is assigned a pager and the police department will page it out. And everybody, at that time, when the police department receives information, they'll immediately -- after that, everybody gets paged out and then they'll respond to the fire station.

Q Now, the BIA Fire Department, they also maintain a fire fighting facility in Tuba City, do they not?

A Yes.

Q And that's separate from the Navajo Nation's fire department?

A Yes.

Q And they have their own equipment?

A Yes.

Q And they have their own personnel?

A Yes.

Q And they will respond, also—if the call goes out, it goes out to both of you; is that correct?

A They normally monitor, and I'm not sure—I'm [175] sure they have some of our pagers, though. The two departments work together real close. Some of the equipment ends up with their personnel and so on, so they get the call at the same time.

Q And they also attempt to respond?

A If it is close, but we try to keep one station, or the BIA back to stand by local areas and not all caravan down to the scene. We try to maintain protection at the community and then send the rest of the crew down to the scene.

Q Would that depend upon how serious the emergency is that you're responding to?

A Yes. We do have three or four pumpers in the Tuba City area, so I believe the BIA has two pumpers and we have two pumpers. So the best thing to do would be to send the two pumpers down to where the fire is. Most of the time, if

it's three miles, five miles out beyond that, we send the two pumpers out.

Q Now, isn't it correct that you do have an agreement with non-Navajo Nation fire departments in other areas around the reservation?

A Would you repeat that again?

Q You were talking about agreements with other fire departments, and I thought you were saying that you did not have any other agreements. But you do have [176] agreements, for instance, with fire and rescue people in Gallup, don't you?

A No, we don't. We don't have any agreements with Gallup. We have an agreement with maybe Ganado. It's quite an old agreement. It might have been before my time that this agreement was in place, so I'm not aware of it.

Q Don't you have an agreement with respect to responding to problems that occur between here and along the highway between here and 666?

A Again, I'm not aware of any during the past four years. So I'm not too familiar with those documents that there was any.

Q Well, let me ask you: Do you have—well, maybe I'm using the wrong word there. Do you have any arrangements or understandings with any of the fire departments around the Navajo reservation?

A An understanding that we respond—or if I call on Navajo states, they would respond when we request for them to come out to, say, Benito (sic) to here. Yes, there is that kind of an understanding, being this is their district, right up here against the reservation or the state line, say Benito here is probably Navajo states, and we provide primary response into that area. We've had a lot of structural fires and brush fires in that area. But if it's serious enough or anything like that, they, [177] vice versa, would call on us. This weekend we were called out to a large brush fire down in Tsayatoh.

They needed our tanker. But basically, it's that kind of understanding.

Q Don't you have an understanding that the cutoff point for response between here and Gallup is the Sagebrush, along the highway?

A It would normally be. But if we're asked to go beyond that, we would respond beyond that. In fact, we were called out to a house fire a mile on the east side of Sagebrush. In turn, we figured Navajo state was closer so we paged them out.

Q In fact, even in the Flagstaff area, you have a general understanding with the state and county fire departments there that you will back each other up and you'll help each other out; isn't that correct?

A That probably is. But the distance is so far from Flagstaff to Tuba City that a lot of times the communications aren't there either verbally or whatever. The State doesn't normally send their trucks up towards the Cameron area. We don't really see them up there in that area. So only the Tuba City Fire Department responds down into that area.

Q Well, if the testimony yesterday was that there was a fire at Cameron Trading Post, at Cameron, Arizona, [178] and the only fire department that Cameron people saw on the scene was Timberline Fire Department, you wouldn't be able to say that that was incorrect, would you?

A I have not—my department has not reported Timberline being on the scene any time. The primary response has been Tuba City. The information I get is reliable to me from the Tuba City Fire Station.

Q But you can't refute that in a particular circumstance, as reported by the Cameron Trading Post employees, that the fire response came from Timberline and not from your people at Tuba City? You can't refute that, can you?

A I don't think so.

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REDIRECT EXAMINATION

BY MR. GOMEZ:

Q If you were to receive a call from the Cameron Trading Post, would you treat that call any differently than other calls from other places in the Cameron area?

A No. There wouldn't be any difference. They would all be treated the same. We would respond and take [179] care of the incident.

Q So when you receive a call, you would respond in the same manner as any other?

A Yes.

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FRANCIS BRADLEY

After having been first duly sworn under oath, was questioned and testified as follows:

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[181]

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Q On state and federal highways, Navajo Nation Police patrol those roads on the reservation; is that correct?

A Yes, sir.

Q Now, being deputized in the State of Arizona, you can give citations on state and federal highways either on the reservation or off the reservation; is that correct?

A Yes, sir.

Q When you're on the reservation, you can give—if it's—say, if we're talking about speeding, okay? If the person who is speeding is a Navajo, you would normally give them a Navajo Nation citation; is that correct?

A Yes, sir.

Q In fact, if the person is a Native American of any nation, of any Indian Nation, you would give him a Navajo Nation citation; is that correct?

A Yes, sir.

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FRANCIS BRADLEY

After having been first duly sworn under oath, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. GOMEZ:

Q Would you please state your full name.

A My name is Francis Bradley.

Q What is your present occupation?

A I am a police captain within the Navajo Department of Law Enforcement, in the Division of Public Safety.

Q What is your official business address?

A P.O. Box 96, Chinle, Arizona.

Q How long have you been employed in your present position?

[195] A In my present position, I've been employed a year and one month.

Q What did you do before that?

A Prior to that, I was a police lieutenant in the Shiprock Police District. How far do you want to go back?

Q How long were you a police lieutenant?

A I was a police lieutenant for nine months in the Shiprock Police District. Prior to that, I was—I spent a year and a half, almost two years, as the acting commander for the Navajo Law Enforcement Academy.

Q Would you please give your educational background?

A I've got, oh, what do you want to call it, a little over one year in community college, and I'm currently working on

finishing up my Associate of Applied Science and Criminal Justice.

Q Every year the Navajo Nation is involved in a fiscal year budget. Have you worked on the fiscal year budget on behalf of the Navajo Division of—or the Navajo Division of Public Safety?

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Q (By Mr. Gomez) I'm going to show you—this Division Funding Summary comes after Page 872.

A All right.

Q Can you tell me what that is?

A What this Division Funding Summary is, is it talks about all the programs within the Division of Public Safety, what funding they're going to be getting from not only the state—correction, not only from—well, yeah, from the state—state coffers, from the federal coffers, and then what the Navajo Nation is going to give each program specifically. So in this case here, this report talks about all of our general funding that we're going to be getting as not only a district of department of program on the division, but what the federal government is also going to give us, and what the totals are.

Q In looking at that, how much does it say the Navajo Nation is going to provide?

A Almost $5 million. When you put all the [197] programs together, the grand total is $4,982,476.

Q In going down those different categories, are those representative of what the Division of Public Safety carries on?

A Yes. Under the Division of Public Safety there are a number of departments, and all the departments are listed here, from Crownpoint Juvenile Detention to Fire and Rescue Services to Highway Safety and, of course, the Law Enforcement and Criminal Investigations. Everything is listed here in our division.

Q In describing the Navajo Nation Police operations, would you summarize how you view the Navajo Nation Police operations within the Navajo Nation?

A The Navajo Department of Law Enforcement is one of, I believe it's five now, departments in the Division of Public Safety—or five programs within the Division of Public Safety. The way the Department of Law Enforcement is broken down is it is headed by a Chief of Police, who answers directly to the Division Director who oversees the Division of Public Safety. The Chief of Police, in turn, has responsibilities and oversight over the Criminal Investigation Program and the Police Services Program. He also deals with the Detention Program, and he also deals with the Support Services, depending on where they are within the department. But he takes care of all [198] of that as well as the Division—correction the Department—district programs. We have seven districts within the Navajo Nation, as well as one training camp. He oversees all those of commanders in each one of those units, so he has a lot of them. The Department is broken down into a lot of different things. The Chief is the one who oversees everything.

Q In the course of your everyday work, did you ever see any state or county or federal officers providing police services within the Navajo Nation?

A Federal officers? We'll see them on maybe an every-other-day basis. If it's an FBI agent, if that's what you want to call from the federal government, yes, we'll see them like every other day. County officers? It depends. We seldom see those; maybe once, twice, a week or we'll hear them on the radio or something like that. Now the state officers, we'll normally see them probably—somebody will see them every day doing highway patrol work.

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Q Okay. Within the Navajo Nation, are your police services available to anyone who calls on you?

A Yes, anyone.

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[201]

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Q I'm going to hand you what we're calling Exhibit D. Would you take a look at that and try to describe that?

A Okay. All this simply is, is on top it says, "Navajo Criminal Justice Information." We call that "NCJI" system. That's what we call it. All this does is tell me that between the 1st of January 1994, and December 1994, these are the officers' activities in certain areas: what they did, how much time they spent on it, what dates they provided the service, who the officer was, and the disposition of whatever the call was for that service provided. That's what this is.

[202] Q Could you maybe take us through an example? A Okay. Let's go to the second page. It's Page No. 2, and its says, "Date prepared, 5/1/95; time prepared, 0746. So it was in the morning. When you look at this NCJI report, first of all, in the left-hand side here, you have the column that has the date. When you look at the first one here, it says, "Date, 1/1/94; Time, 2300 hours, which is 11:00 p.m.; Activity, request watch or patrol; Time Received, 2300; Dispatch, 2300; Time Spent—I'm not sure if that's 39 minutes or not, but I'm pretty sure that's what it may be. But it says, "Assistance rendered complete. No report. The officer is it says "PO" at the end. That's all that is. It just tells you what he did during that time.

Now, what this report doesn't have on it is that each one of these calls for a service or the activity that's listed down, there is a number assigned to this and, in this case here—we call them CC numbers, complaint control numbers. Each service that's provided is reported on a CC card. That information, in turn, is what generates this report.

Q Turn back to Page 1, down on the left—sort of the left-hand corner, where it says, "grid."

A Right. Now, the other thing I didn't put on [203] there is, you see, these CC cards that we have, it will list who

called in the traffic, when it was called in, traffic meeting, what type of services were requested.

Let's say I call the police and say that I've got a suspicious person running around outside my yard here, can you send an officer over. That, in turn, will be listed down something like a suspicious activity or a request for a security check. That's where we end up getting into these different headings here. But the officer will be dispatched to come out and check. When he comes out and checks and he doesn't find anything, he'll call the dispatch back and tell them, "Look, I couldn't find anybody, but I did make the security check and everything is okay." At the bottom of that card, there is a place where we put our ending time in, when that activity was completed, and then on the back of the card, you would have a disposition code. A disposition code would tell you that—like here, where it says, "Assistance rendered. Assignment complete." That's where you would get that kind of information from.

Now, you would also—on that CC card, there are specific grids. A grid is an area—it's a number assigned to a specific area. In this case here, these reports are generated off of the grid code for the Cameron community. So that's where all this information comes [204] from. This information is specific to the Cameron community.

Q So let me hand you what I'll refer to as Exhibit E. This is a grid code. Most every place on the Navajo Nation has a grid code. Well, every place on the Navajo Nation has a grid code. Like for Page 1, where it says, "Grid, Cameron Community," that would be Grid 4HA; is that correct?

A Four Henry Adam, that's Cameron community. Now, that just gives—okay, Cameron Community, in general, you could say, "All right. Anything outside or close to or around this area would be Four Henry Adam." If it was the trading post or motel, the old state housing, it would be Four Henry Adam.

Q Could you turn to Page 20 of the main report?

A Okay.

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Q (By Mr. Gomez) Captain Bradley, would the patrolman who's identified on the right here, would they normally get this report?

A No.

Q Who utilizes this report?

A We would; anyone in command or anyone looking through statistics, things like that. It's available to—usually the more administration—the higher up the administration is and the type of information you're going to have access to. This isn't information that's readily given out to patrol officers.

Q What do the administrators utilize these reports [206] for?

A Statistical information on -- like in this case here, we're talking about Cameron. We're doing some kind of study or some kind of write-up for the Cameron area, and we would be going back to these reports here. This is the information we would be getting off of them, because it would be like how much time was spent there, what type of calls do we have there, what do we need to anticipate for that community in the next year coming up, three years, five years. Whatever type of program we're working on, this is the type of information we would go back and get, and specifically what shall we do.

Then again, it may come up into an investigation to where we have to track our officers' activities, something like—we always go back to these reports. "At this time, according to what he's saying, this is where he was at." All right. "This is what it has here." It just depends on what we're doing. But we would be dealing with these a lot.

Q So it's not something that the patrolman on the scene would utilize, but it's something that his supervisors would utilize for planning purposes or investigation purposes?

A Yes.

Q I'd like to ask you to turn to Page 20 of that [207] first report. Can you describe what Pages 20 and 21 are?

A Page 20 shows you—again, it tells you the dates and the times and the activities that the officers provided there. But it also gives you a breakdown from the time between 1/94 and 12/94. These are the type of services that were provided specifically to the trading post and motel and the old state housing.

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Q (By Mr. Gomez) So on Page 21, in looking at the 10 bottom left corner, would that be the grid for the trading post, motel, and old state housing?

A Yes, sir, it would be.

Q And the numbers listed there, that would be a summary of the total incidents, I guess, or items listed on the report; is that correct?

A The items listed on the report is a total summary from January 1st to December 31st, 1994, regarding all police—all incidents we answered in this particular community area and the type of complaints that were answered or checked into by the officers listed here. This is where we go back and say: All right. This is who did this; this is what they did; and how many times they're out there, answering these specific type of calls.

Q So the officers—there would be Clarence Bilagody—

[210] A Jerome Dennison, Raymond Butler. Those are the three that are listed down here. There's Terrance Logg.

Q And then if you look at Pages 22 and 23, that appears to be another grid code. Page 24, actually.

A Yes, it is. It's another grid code for the chapter house, the school, Huskon Village, I believe it is, and then the churches. Again, that would fall under our grid code system. When you look at this here, it has one general grid for the Cameron community, and then it's broken down into specific

areas within that community. So that's what this whole report is going to detail, is the different areas within the Cameron Community.

Q And this report covers—do you remember how many years this total report covers, besides '94? Does it go back to '93 and '92, also?

A Yes, it goes back. It goes back to 1/92 to 12/31/92.

Q So it covers like a three-year period?

A That's where it's going to tell you when that report was taken, what time span it runs. And then go all the way back up to the second page, where it talks about 1/1/94 to 12/31/94. It tells you everything about that specific time frame.

Q Thank you. This is the type of report that you would utilize in determining the needs of staffing in the [211] Cameron area?

A Yes, sir, it would be.

Q Or if you had an investigation going as to where an officer was—

A It would be used for just like you're saying: staffing, planning, evaluation, investigation. That's what we would be using this for. And this report here is—anywhere on the Navajo Nation, you get one generated for whatever the community is. Depending on what specific information you were looking for, you could pull it off of this. This is one type of report you could pull it off of.

Q So as far as planning is concerned, if you would look at the number of incidents, if the number was high enough, you may—you might assign additional personnel in the area?

A Yes, sir, it would be that area.

Q So if the number went down, you might pull back personnel; is that right?

A Yes, it would be. Again, it would be, depending on—okay, do we have a traffic enforcement problem? Do we have a domestic violence problem? Do we have a lots of burglaries? You know, what is the problem? We would be looking at that to see how we would be dealing with it.

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(Note: Exhibits D and E admitted into evidence.)

Q (By Mr. Gomez) Going back to your everyday police operations, sir. Do you distinguish between fee land and trust land in answering calls?

A No.

Q Would you handle calls coming from the Cameron Trading Post, which is fee land, any differently than you would calls from other places in the Cameron area?

[214] A No.

Q If a call goes to the county sheriff, does that officer refer calls to you occasionally?

A Yes. In fact, any sheriff's department that the Navajo Nation deals with will almost automatically refer all calls that occur in or around the Navajo Nation, particularly within the exterior boundaries of the Navajo Nation, back to the Navajo Nation.

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Q Are there some nonemergency-type services that are offered by the Division of Public Safety?

A The Department of Law Enforcement, Division of Public Safety? When you talk about Division of Public Safety, you're talking about fire and rescue, ambulance, highway safety, all of that. You're going to have to distinguish—

Q I guess what—you are the police.

A The Department of Law Enforcement Office. Now, there are—it's like to make security checks, motorist assists. We call them relays, but it's taking people home, you know. I've got a number down—I can't use jargon. We do relays, we do different types—like opening doors, dog barking complaints, just things like that. Those are nonemergency-

type calls, disturbances—noise disturbances in particular, all kinds of things like that, changing flat tires, delivering babies. Well, I guess that would be depending on where you were at, emergency or nonemergency, but things like that.

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Q Could you describe your Highway Safety Program?

A Our Highway Safety Program? It's headed here in Window Rock by the Training Center. What they do is they provide—well, let's start off simply by saying that they do a lot of statistical information about crashes, causes of crashes all over the Navajo Nation, where we have high crash areas, how many DUIs there have been in specific areas, age range, things like—they do a lot of research into highway matters.

They also apply for a lot of grants and give a lot of grant money dealing with highway traffic safety deals [218] like buying radars, providing training for car seat use. They also issue Navajo Nation driver's permits to the employees of the Navajo Nation. So they do a lot of driver's training and things like that. They do a lot of surveys, planning, apply for grants, all kinds of stuff like that. So they're into everything.

Q Earlier we looked at the budget, and it was like $4.9 million of Navajo Nation general funds in your budget. If all of those Navajo Nation general funds were wiped out, completely cut, would there be an impact on your department's ability to provide services at the current level?

A Severely. It would be a severe impact upon the Nation, because right now, if you want to talk about the services provided by Emergency Medical Services, Fire and Rescue, their program services are not as extensive as ours, let's just put it that way, their law enforcement services. Those are the three emergency services that depend heavily upon the Navajo Nation's general funding to provide operating moneys for these departments. The Navajo Nation general funds provides a lot of the operating funds for our vehicles, our

supplies, our maintenance, our equipment. That's where we get our funding from for those specific items there. It also provides for overtime funding and some positions within [219] the division.

If you cut those out, if they were totally wiped out, then the services that have to be provided, essential emergency services, would probably be cut. Three quarters of the current existing services, I would have to say, would be wiped out or completely nonexistent, and then they would have to be farmed out to somebody else to provide.

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CROSS-EXAMINATION

BY MR. DARLING.

Q Captain Bradley, let's look at the budget for just a second.

A The one that I was originally looking at?

Q Right. What page was that?

A That was on Page 872.

Q The page I'm looking at doesn't have a number on it. I guess it's the bottom part of Page 872. The total budget for the Navajo Nation division is $27,125,965; is that correct?

A Yes, sir.

Q And of that 27 million, 22 million comes from the federal government; is that correct?

[220]

A Yes, sir.

Q So somewhat over 80 percent comes from the federal government; is that correct?

A Yes, sir.

Q Now, the State Highway Patrol does patrol state and federal highways within the reservation, does it not?

A Yes, sir.

Q And that would include U.S. Highway 89 through Cameron, and Highway 64 from Cameron to the Grand Canyon, would it not?

A Yes, sir.

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[231]

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TULLEY MANN

After having been first duly sworn under oath, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. GOMEZ:

Q Would you please state your full name.

A My name is Tulley Mann.

Q What is your present occupation?

A Right now I'm a staff assistant with the Division of Health.

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Q I'm going to show you what's called a Divisional Funding Summary, and this is from the Fiscal Year 1995 Budget. Have you seen that document before, Mr. Mann?

A Yes, I've seen this document.

Q Could you describe services that your department provides?

HEARING OFFICER ADAMS: Excuse me, what page are you on?

MR. GOMEZ: This would be 972 and 973.

[233] Q Could you briefly describe the different services there.

A For each program?

Q In your own words, if you want to do it for each program or an overview, either way.

* * * *

Q (By Mr. Gomez) If you could maybe just briefly describe each program.

A It would be easy for me to just kind of very briefly describe to you each program's services. We'll go down the line, starting with the New Dawn Program. The New Dawn Program is primarily concentrated in the five BIA agencies on the reservation, and they work with each community. They're funded by federal funds, and it provides assistance to any member of the community, regardless of—it has to do with growing fruit trees, gardening around the house, the chapter, the community, and assisting with the different types of fruit [234] trees, vegetation, or whatever they need.

The Foster Grandparents is also federally funded and is matched with general funds. We provide services, and it's primarily concentrated on the reservation. It provides services to the children in school by elderly individuals that are able to pass on traditions to primarily Navajos in the schools, in the public school, BIA schools, whatever.

Then Kayenta Community Health Program is an assistant aid contract. It's a Public Health Nursing Program, and these are concentrated in the Kayenta area or Jeddito area, Black Mesa, Inscription House, Kaibeto area. If there has to be immunizations, they provide immunization to the school kids, public schools, BIA. Then Sanders Community Clinic is primarily—they subcontract with the doctors and nurses out of Gallup Indian Medical Center to provide services in the new lands area, some dental and some nursing services.

The WIC Program provides services to all individuals that are eligible to services under that particular program, for infants up to two years of age. It really doesn't matter what nationality they come from.

And then the Division of Health, that's the administration. We oversee and monitor the program operations of each of the programs throughout the field as [235] they level down to the field. It's primarily management and administering management contracts; federal, state and local.

And then CHR Program is primarily geared towards providing some assistance to all individuals on the Navajo reservations that need help or referral to hospitals for diabetes or whatever, TB, social hygiene and things like that.

The Food Distribution Program is primarily for low income people that need to have additional food, as far as milk commodities, things like that, surplus. There are no food stamps involved for low income individuals that are living on the Navajo reservation.

Shiprock Steering Committee. That's primarily concentrating on the facilities, construction design for Indian Health Services.

Health Education is a primarily geared towards the public that live within each of the communities, border towns as well as the schools. It's geared towards the public, regardless of what their nationalities are.

TB Control is a state contract which addresses TB cases referred by the county, the state or the CBC offices. And they do refer them to any public health services or county health services so they can be taken care of if they have a case of TB. [236]

Behavioral Health Services. That's primarily concentrating on alcohol problems, prevention and referrals of Navajos and other Indians that need services, as well as families and things like that.

The Omnibus Drug Program is primarily a drug prevention program throughout the communities and the schools.

Dilkon Steering Committee primarily concentrates on high interest in the facilities. That now exists in Winslow, Arizona. They're trying to promote a facility to be built in the Dilkon community.

The Navajo AIDS Program is primarily contacting people that have AIDS that are on or off the reservation and trying to work with them in the cultural setting, traditional setting, things like that. They also provide public education to each and all people that live in each of those communities, including border towns.

The Ft. Defiance Steering Committee is primarily looking at design, construction and planning for a new facility in Ft. Defiance Agency.

Male Minority is primarily dealing with male individuals that have alcohol or drug problems and how they can be rehabilitated or referred for counseling or rehabilitation.

New Mexico Health at Crownpoint. That's primarily [237] funds for the State of New Mexico to address alcohol and mental health programs or problems within the community, within the State of New Mexico, that are part of the Navajo Nation.

The NAAA Administration is overseeing the program operations of senior parents, foster grandparents, alcohol program. It's specifically geared towards individuals living on the Arizona portion of the Navajo Nation that have alcohol problems.

The Arizona Drug Abuse Program primarily is a community drug abuse awareness program for adolescents as well as adults.

Chronic Mental Ill-Toyei. That's just the tasking funds to work with the CMI individuals at Toyei facility.

Arizona Children's Service is a program primarily geared towards individuals on the Navajo reservation in the Arizona portion that have to do with alcohol and drug abuse problems.

The Intervention and Prevention Program is primarily the same thing in the Arizona portion of Navajo Nation. It's the same thing with the American Indian Health Program.

The NAAA Senior Program, they're all Older Americans Act, Title 6 and Title 5, programs. On the Navajo Nation any individuals that qualifies that is over the age of 55 [238] or 60 can utilize these services that are provided by the Senior Center Program.

Q Thank you. In looking at the funding sources for those programs, what are sources of funding for the total division?

A Most of the funding comes from the federal government, which is state—I mean, not state—the 638 contracts, or USDA contracts, 638 contracts. Then the

second largest funding is from the general funds appropriated by the Navajo Nation. The third portion of the funding comes from the state and private funding, funding through intergovernmental agreements with the states; New Mexico, Arizona; and then other tribal funds, like trust funds and revolving account funds, things like that.

Q How much funding from the tribal general funds?

A About $7 million.

Q A year?

A Yes.

Q What geographical area are these services provided to?

A All the services that I have described, the services are provided through the three states: Arizona, New Mexico, and a portion of Utah; and then satellite communities like Ramah, Canoncito, as well as border [239] towns. Like the WIC Program, they have an office in Winslow, and then we also have a network within the offices out of Kirtland, New Mexico.

Q Regarding the services, do you know where the Cameron is—

A Yes.

Q Is that area treated any different than any other portions of the Navajo reservation?

A No.

Q Do you have personnel who are assigned out into the different communities for some of these programs?

A For example, CHR is assigned to about 107 chapters—communities, and one of those works out of Cameron. Then WIC also—there are agencies in Tuba City, but they go out to the Cameron area on a periodic basis, on a monthly basis. Then we do have environmental health and sanitation inspectors that go out to each of these areas that have vendors who sell foods or any type of merchandise.

Q Could you describe how your office assisted with the identification and education on the prevention of regarding the Hantavirus?

A The Hantavairus primarily began in the Crownpoint area, in Four Corners, closer to the Four Corners area. We've identified individuals in each of [240] those areas primarily through referrals and/or when the individual is taken to the hospital. Then after that, what we did was with the money that we received from CDC, we implemented a prevention program to enlighten the public, not only Navajos, but also other nationalities, regardless of what it is and who it is. We had to deal the stereotypical stereotype label "disease," and then we had to overcome the particular barriers. And they found out about June 16th there has been 110 cases of Hantavirus throughout the United States, and approximately 51 percent have been fatal cases. The money that we use from the federal funds from CDC is also used to investigate and track all the areas, not only the Navajo reservation, but in other counties like Coconino County, who did work with each of the state health departments in identifying and promoting prevention.

Q In looking at your division's budget, if all the Navajo Nation general funds were removed from there, would there be an impact on your division's ability to provide services at the current level?

A Yes. For example, we wouldn't be able to operate a foster grandparents program because the federal government quits passing the money to the state and the state, in turn, contracts with us. They require matching dollars, local dollars. It's the same way with food [241] distribution that provides commodity foods for low income individuals. We wouldn't have an AIDS Program if we only depended upon federal funds. If we didn't have local matching funds for senior center programs, we wouldn't have a program. That's under Older Americans Act, Title 3 and Title 6.

MR. GOMEZ: I have no other questions. Thank you.

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CROSS-EXAMINATION

BY MR. DARLING:

Q Now, Mr. Mann, in looking at the budget, the total budget for your division is $45 million; is that correct?

A Yes.

Q About $45 and a half million?

A Yes, that's correct.

Q And of that, only $7 million comes from the Navajo Nation General Funds; is that correct?

A That is correct.

Q And if you include other tribal funds, you still have less than $8 million; isn't that correct?

A That is true.

Q And that's less than 20 percent of your total budget; isn't that correct?

[242] A I guess you did your math.

Q Well, if you'll double-check me, I wouldn't mind. I wouldn't feel offended.

A Okay.

Q Now, some of the programs that you administer through your division are available to whoever qualifies, whether they're Navajo or non-Navajo; is that correct?

A That is correct.

Q And other programs that you administer through your program are only available for members of the Navajo Nation or other Native Americans, isn't that correct?

A That is correct.

Q Now, in the areas where the programs that you have are available for nonmembers, there is state and federal funding to cover the costs of providing those services for nonmembers, isn't there?

A That's correct.

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[247]

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MICHAEL DAVIS

Having been previously duly sworn under oath, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. DARLING.

Q Mr. Davis, you have previously been sworn in. Let me ask you a couple of questions with respect to the fire that occurred at the employee's residence out in Cameron, Arizona. Did you hear Officer Bilagody's testimony yesterday that the Navajo Nation Fire Unit responded to that?

A Yes, sir.

Q Did you see them there at the fire?

A No, sir.

Q Now, do other police and the Navajo Nation [248] Police routinely come by Cameron Trading Post?

A Yes, sir.

Q Who are those?

A Mainly the Department of Public Safety.

Q And that's the Arizona State Police?

A Yes, sir.

Q How often do they come by the property?

A At least once a day, usually twice.

Q When you have a problem in Cameron and you make a call, do the Arizona State Police ever come by in response to those calls?

A Yeah. I had an incident just a couple of days ago where they did.

Q Now, when they come by, do the Navajo Nation Police always come by as well?

A No.

Q And how would you—in your experience in being out there, how often do the Navajo Nation Police come by when the state police are there, also?

A Maybe as much as 50 percent of the time.

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CROSS-EXAMINATION

BY MR. GOMEZ:

Q You mentioned that since this litigation has begun, that you have seen the Navajo Nation Police quite frequently patrol your trading post; is that correct?

A Well, I've noticed them a lot more than I did in the past, obviously.

MR. GOMEZ: Is it possible to go back to [255] that question that was asked by Mr. Darling of Mr. Davis and repeat—

A Well, I said quite frequently. I mean, there is no need to repeat it.

Q So would it be correct that you have noticed the Navajo Nation Police patrol the Cameron Trading Post quite frequently?

A Yes, sir.

* * * *

[256]

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Q What about that specific incident?

A Not that I can recall.

Q You mentioned that the Navajo Nation Police have responded periodically to alarms, and you mentioned the one incident that you said you talked about in your direct testimony earlier yesterday. Did Arizona DPS respond to that alarm?

A Which incident was that? I'm sorry.

Q The incident you just referred to that you referred back to yesterday, in your testimony yesterday.

A No, because—

Q So nobody responded to the alarm?

A No. You're talking about where the windows were broken in the dining room?

Q Is that the incident that you referred to?

A I think so, yes. Nobody responded.

Q The sheriff's department didn't respond, either?

A No.

Q And you said that your alarm rings where?

A Pardon me?

Q Where does your alarm ring?

A The alarm rings in Phoenix.

Q Who do they call?

A They would call—I'm not sure if they call the [257] sheriff's department and they refer it to the Navajo Police Department, or they call Navajo Police Department directly.

Q Are you sure they called the Navajo Police Department?

A Well, they showed up.

Q In that instance, are you sure that they're all Navajo Police Department?

A Well, they showed up a couple of hours later, without us having to call them.

Q So is it possible that they would not refer the call until later?

A I wouldn't think so. Usually the alarm company reacts very quickly.

Q But that was a possibility?

A Anything is possible.

Q You were talking about some juveniles—in looking at the report here on Page 20—juvenile disturbances. You contacted the Navajo police about the juvenile disturbances more than twice?

A Yes, sir.

Q Do you know where the juveniles come from?

A From the Cameron community.

Q Do any of these juveniles come from employee housing or Cameron Trading Post?

[258] A couple of them, yeah.

Q Have you taken any internal measures to deal with those?

A Yes. I've told their parents that they would lose the right of employee housing if they couldn't control their children.

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MR. DARLING: The only other thing that I have that I wanted to present was Mr. Watchman's testimony. I was originally told he would be here at 1:30 today, and now we don't know exactly when he is going to be here. We heard 3:00, and then we heard between 3:00 and 3:30. I would be just as willing to offer his deposition and use his deposition in this matter and go ahead and do our closing statements. I understand Mr. Gomez does not have any further witnesses, and then we can conclude this matter.

HEARING OFFICER ADAMS: Mr. Gomez?

MR. GOMEZ: We have no objection to [260] entering Mr. Watchman's deposition. The only thing we would like to do is to offer the depositions of Stella Saunders, Henry Wallace and Virgil Pablo that we raised. These were the three depositions of the people who were not present this week.

* * * *

HEARING OFFICER ADAMS: I can do that. With respect to the Tax Commission, Mr. Gomez, we have Exhibit A, which is the Reservation Business License; Exhibit B, which is the FY '95 Navajo Nation Budget; Exhibit C, which is a tourism and marketing survey; Exhibit D, which is the Navajo Criminal Justice

[261] Information System Officer's Report; and Exhibit E, the Police Grid Identification.

MR. GOMEZ: We had offered the entire Navajo Nation Fax booklet.

HEARING OFFICER ADAMS: Yes, I have that. We discussed that yesterday. The reason I haven't listed it is I don't think we gave it a number. So you tell me how you want to handle that. I agreed yesterday we would have an exhibit number.

MR. GOMEZ: The entire booklet.

HEARING OFFICER ADAMS: So do you want this to be—

MR. GOMEZ: That could be Exhibit F.

HEARING OFFICER ADAMS: Exhibit F. All right. Are there any other exhibits that should be considered?

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BEFORE THE NAVAJO TAX COMMISSION
THE NAVAJO NATION

Case No. 95-008

THE MATTER OF:

ATKINSON TRADING CO., INC.
Taxpayer.

DEPOSITION OF STELLA SAUNDERS

March 15, 1995

9:05 a.m.

Navajo Nation Department of Justice

Window Rock, Arizona 86515

PURSUANT TO SCRA 1986, Rules 1-026 and 1-030, this deposition was:

TAKEN BY: MR. WILLIAM J. DARLING
ATTORNEY FOR THE TAXPAYER

REPORTED BY: MABEL JIN CHIN, NM CCR #81
Bean & Associates, Inc.
500 Marquette, Northwest, Suite 280
Albuquerque, New Mexico 87102

BY MR. DARLING:

[3] Q All right. Miss Saunders, would you please state your full name?

A Stella Saunders.

Q Ms. Saunders, have you had your deposition taken before?

A No.

Q I'll be asking you questions today. You need to listen to my questions. If you don't hear or understand my

questions, ask me to repeat or to explain, otherwise I'll assume that you are responding to my question. Okay?

What is your occupation or profession?

A Financial analyst.

Q Who do you work for?

A My direct supervisor or—

Q Well, let's say, what department do you work for?

A I work in the Support Services under Division of Economic Development.

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Q Okay. In the interrogatories in this matter it says that you will be testifying in your testimony that you will describe the activities carried on by the Division of [7] Economic Development. You know, just describe to me what the Division of Economic Development does and what you expect to testify to about that.

A Okay. I need to look at my book and kind of refer to things.

Well, the division is primarily involved in creating jobs, income opportunities on the Navajo Nation. We get involved in planning large-scale commercial, industrial, and tourism projects. We also get involved in providing financial and technical assistance to small businesses on the Navajo Nation. The large projects can include anything from manufacturing, recruiting manufacturing industries to shopping centers, tourism resorts.

There are a number of different projects that we're working on right now. One of them is like Antelope Point, which is going to be up near Page.

We have some shopping centers that are still in the planning stages. We have built probably nine shopping centers throughout the Navajo Nation, and the shopping centers provide spaces to individual businesses. Most of them are anchored by a large grocery store, and then we have

the smaller shops for the Navajo, small Navajo business people.

Our division puts together the financing for those [8] projects, and then after it's completed, we turn them over to the Navajo Nation Shopping Centers and they manage the shopping centers. They are also under our wings, I guess, for the division, although they are kind of a quasi-independent organization.

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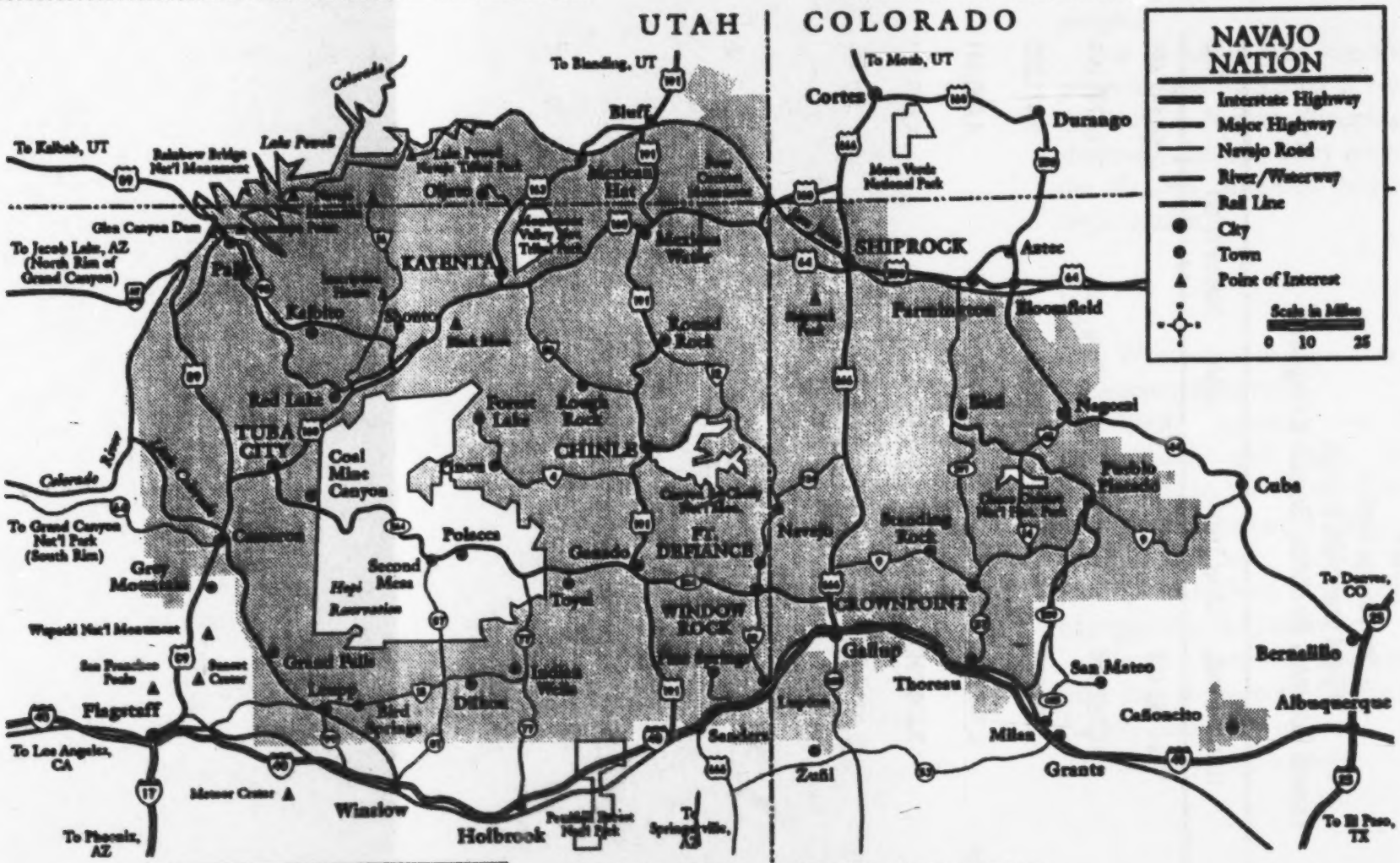
Q What other departments does the Division of Eco-nomic Development have?

A Well, currently we have Industrial Development Department, and their responsibility is for recruiting businesses to the Navajo Nation. They have done projects such as the Packard-Hughes project with NAPI. There is a facility up there. There's also another Packard-Hughes facility up in Fort Defiance. They helped that group do an expansion of the facilities.

Then we have the Tourism Development Department, and that, they are responsible for general promotion of the Navajo Nation regarding tourism. They also develop projects that deal directly with tourism.

Table 6
The Navajo Nation
Fiscal Year 1995 Budget
Overall Summary By Office, Branch & Divisions

Branch/Division	General Funds	Other Tribal	Federal	State/Private	Total
Executive Offices	$4,152,465				$4,152,465
Legislative Branch	16,788,074				16,788,074
Judicial Branch	4,590,895		$880,428		5,471,323
Division of General Service	4,755,554		234,887		4,990,441
Division of Finance	3,300,791	$748,000			4,048,791
Office of the Attorney General	5,202,634			$7,500	5,210,134
Office of Management & Budget	1,010,447				1,010,447
Office of the Tax Commission	1,343,056				1,343,056
Division of Economic Development	4,573,924	700,000			5,273,924
Division of Community Development	8,858,787	2,800,000	11,632,553		23,291,340
Division of Human Resources	6,072,704	2,132,012	14,576,556		22,781,272
Division of Natural Resources	15,650,952		15,053,286	310,739	31,014,977
Division of Public Safety	4,982,476		22,126,391	17,098	27,125,965
Division of Health	7,135,230	600,000	34,601,574	3,113,270	45,450,074
Division of Social Services	4,661,301		37,968,835	2,527,947	45,158,083
Division of Education	5,710,209	$3,343,250	$29,743,583	$1,569,379	40,366,421
Fixed Cost	7,993,087				7,993,087
Fixed Costs Credits	(11,804,586)				(11,804,586)
Tribal Grants	$2,292,000				$2,292,000
TOTAL:	$97,270,000	$10,323,262	$166,818,093	$7,545,933	$281,957,288



BEST AVAILABLE COPY

BEFORE THE NAVAJO TAX COMMISSION
THE NAVAJO NATION

No. 95-008

THE MATTER OF:

ATKINSON TRADING CO., INC.
Taxpayer.

DEPOSITION OF HENRY WALLACE

April 12, 1995

2:05 p.m.

Navajo Nation Department of Justice

Window Rock, Arizona 86515

PURSUANT TO THE SCRA 1986, Rules 1-026 and 1-030 this deposition was:

TAKEN BY: MR. WILLIAM J. DARLING
ATTORNEY FOR THE TAXPAYER

REPORTED BY: MABEL JIN CHIN, NM CCR #81
Bean & Associates, Inc.
500 Marquette, Northwest, Suite 280
Albuquerque, New Mexico 87102

* * * *

[3]

HENRY WALLACE

After having been first duly sworn or affirmed under oath, was questioned and testified as follows:

EXAMINATION

BY MR. DARLING:

* * * *

Q Mr. Wallace, who is your employer?
A Navajo Nation.
Q And what is your position with the Navajo Nation?
A I'm a department director.
Q What department?
A Emergency Medical Services.

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Q Okay. What did you do or what have your duties been with the EMT department?

A There's a whole range of activities and the formula that I guess I use is the one that I mentioned earlier, that is, planning, organizing, directing, staffing, budgeting, and controlling. Under planning, I plan for the [7] department's administrative functions as well as operational functions.

Under organizing, I organize or I assist in organizing certain activities such as covering large-scale events, i.e. Navajo Nation Fair, things like that.

Staffing. I am responsible for all staff of a department. I also am responsible to maintain the staff at certain certification and licensure levels. I. e., all EMTs must be state licensed.

Directing. I directed the program and its goals and objectives. We have yearly goals that we have to set and work on and at, which is given—well, in guideline sense is given to us from the Indian Health Service who is our primary funding source, or I should say the Navajo area Indian Health Service.

Budgeting. I'm responsible to develop, maintain and monitor the four different budgets that we have. One being the Navajo Nation General Fund. Two, being the 638 grant

that we receive from Navajo area IHS, which is what it's called, a 638 grant. Three, New Mexico Cofund Act monies that we receive from New Mexico, which is used exclusively for our offices in New Mexico, and then the other account we have is what we call third-party reimbursement. It's monies that we collect from eligible beneficiaries, i.e., Arizona Access, New Mexico Medicare, [8] Medicaid, and so forth.

Controlling. I have to control all of those that I just mentioned, and one way I do that is in monthly reports, quarterly reports. I have to give statistics and I have to—I give reports to both the Navajo Nation and the Navajo Area Indian Health Service, and those are done, like I said, monthly or quarterly.

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Q Okay. What services in general does the Emergency Medical Services Department provide?

A We provide two levels of patient care, one being basic life support, the other being advanced life support and they are both direct care services.

Q One is basic life support and what is the other one?

A Advanced life support.

Q What is the difference between basic life support and advanced life support?

A The administration of certain drugs, i.e, aspirin, Tylenol, IVs, intravenous solutions, those are not done by the basic. The basic is just basically to stabilize the patient when they arrive, check blood pressure, the vital signs, check for injuries, stop the bleeding, things like [10] that.

Q Okay. Then advanced life support?

A Advanced life support is the administration of those drugs, starting IVs, and—

Q Okay.

A —things like that.

Q What types of situations do you respond to? And when I say you, I mean your department.

A Okay. Virtually anything that's verified and bonafide, I guess is the way I should do it. Anything meaning dog bites, suspected child abuse, sexual penetration, motor vehicle accidents, people falling off horses, children spilling hot water on themselves, anything that a human being can get into, I guess.

Q Would it be correct to say that you respond to calls, to emergency calls?

A Yes.

Q Okay.

A That's correct.

Q You don't treat patients in a clinical environment at all, do you?

A I—the word "treat" would have to be defined, I guess. Our EMTs, when they respond to, say, like a motor vehicle accident, they treat the patient, quote, unquote, at the scene. They stop the bleeding. They cover up wounds [11] and they package the patient, put them in the ambulance, they are taken to the facility. At the facilities where the advanced care comes in, they do the x-rays. They administer other drugs which may be cardiac or cardiac-related if that's the case. I guess we do treat patients in or at the advanced level at the scene. But we don't set broken bones or things like that out in—out at the scene.

Q Okay.

A We make sure that further injury is prevented.

Q Okay. Where is the nearest facility that you have to Cameron?

A Tuba City.

Q And what is your—can you describe your facility at Tuba City?

A It is a hospital, I'm not too sure of what level. IHS has a categorical classification of these. It is a hospital. It has an ER. It has, I believe, two or three beds in the ER, and it's

staffed by physicians and nurses that are trained in trauma and emergency care work. To what extent, I don't know.

Q Okay. Now the nurses and physicians at the hospital do not work for your department, do they?

A No.

Q Okay. Do you know who they work for?

A Indian Health Service or the Public Health Service, [12] or whatever the appropriate title is.

Q Okay. Do any of your employees work at the hospital as such?

A They are stationed at the hospital. Therefore, they assist the physicians or nurses in the emergency room.

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Q And you have EMTs available on a 24-hour basis?

A Yes.

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Q Okay. Now, if you do respond to an incident or an accident outside the reservation, are you compensated for [20] that in any way?

A Yes.

Q How are you compensated for that?

A We are allowed to charge the patients.

Q Okay.

A The insurance billing charges.

Q Would that come under the fourth category of funding that you have, which is third-party reimbursement?

A Yes.

Q Now describe for me all the methods by which you obtain third-party reimbursement?

A We currently, we only charge two fees, a flat call-out fee, and a mileage fee.

Q And what are those two fees?
A The call-out fee is $300.
Q And that's just for calling the ambulance out?
A Right.
Q You charge $300?
A Right.
Q And then what is the mileage fee?
A $6.25, I believe it is.
Q Per mile?
A Yes.
Q Now, do you get reimbursed that amount for all calls that are made?
[21] A No.
Q Okay. Which calls do you get reimbursed for and which do you not get reimbursed for?
A Those that become eligible under whoever's company that we're dealing with, coding system or guidelines.
Q Can you give me an example?
A Let me see. The one we have a lot of problems with I guess now is those that are classified that where an ambulance—let me see if I get this right—was not required.
Q Okay.
A A call where an ambulance was not required but our ambulance showed up. In other words, I guess I would—I guess I better describe, like, an ambulatory patient.
Q Okay. Somebody called the ambulance, but it really wasn't necessary because—
A Yes.
Q Because of the—because the patient was able to go off on their own, okay. All right. Now, are there any other kind of incidents where you don't get reimbursed?
A Our denials that we get back are really based on one of the discrepancies, mileage discrepancies. What's other another one that we have? Patient—a physician didn't sign the patient release form.
Q Okay.

[22] A No patient number.

Q Okay. Now, if you respond to a call where a member of the Navajo Nation was injured, do you get reimbursed for that?

A Yes.

Q And who reimburses you?

A A member of the Navajo Nation?

Q Yes.

A If their insurance is, if they are eligible under whatever insurance they may be carrying, then that insurance company reimburses us.

Q Okay. And if they don't have insurance?

A It's sort of a free service.

Q Okay. If it's a nonmember of the Navajo Nation who pays?

A Same thing. The insurance company of that person.

Q Okay. And you say you also get reimbursed by New Mexico Medicare or Medicaid or Arizona Access?

A Well, it depends on where the accident is. See, we operate in two states, actually three states, so if it's New Mexico Medicare we're dealing with, then the forms will go to that office.

Q Okay. Could you describe for me your relationship with the Indian Health Service?

A Good.

[23]

* * * *

Q Let me ask you first, what percent of your budget comes from funding from the Indian Health Service?

A Probably 90 percent.

[24] Q What kind of conditions are there for that funding? What do you have to do, in other words, to obtain the funding?

A We have to insure that we're going to assist Indian Health Service in and around the emergency room.

Q Okay.

A We have to insure that the funding, the dollars are directed toward the direct-care services. We have to insure that we're going to comply to, say, like the Drug In The Workplace Act. I guess it's a federal act that we have to comply to. And we have to comply to whatever standard laws, ordinances, that we deal with, and in this case, it's one of them is New Mexico EMS Bureau or where our EMTs are licensed.

* * * *

Q Okay. Now, going back to your funding sources, [25] then, the second funding source that you talked about, the 638 Indian Health Service Fund, that would be approximately 90 percent of your budget; is that correct?

A Approximately 90 percent.

Q And how much of your budget comes from the Navajo Nation General Funds?

A 286—somewhere around there, thousand.

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Q And the Navajo Nation uses some of its general fund to give you the money to pay the leases?

A Right.

* * * *

Q Okay. Now, the New Mexico monies that you receive, what part of your budget is that?

A It varies year to year. It's—we don't get but like $30,000 or less.

Q $30,000 or less?

A From New Mexico.

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Q Okay. How much of your budget is the third-party reimbursement?

A Very minimal. For an 11-month period I think it was, in between fiscal years, we generated I think it was $130,000.

Q Why is it so little? I mean, let me phrase that a different way. And maybe it's not so little, but let me ask it in a different way. Do you have anything that would show what percent of your calls get reimbursed?

A Not offhand. We would have to go back and kind of hand tabulate that.

Q Do you have any estimate as far as what percent of the calls are reimbursed?

A Right offhand, 60 to 70 percent.

Q Are reimbursed?

A Are reimbursed.

Q Okay. Do you know what—do you have anything that shows how many calls you respond to every year?

A Yes.

Q Okay. And do you remember approximately how many it was, for instance, for this past year?

A We haven't completed this past year's statistics. Last year we responded to over 5,000 calls.

Q Okay. Just not even counting mileage, at $300 a [28] call, that should have been reimbursement of about $1,500,000 and you recovered about maybe $130,000? Would that indicate you are really getting reimbursed for about 10 percent or maybe even less once you figure mileage in?

A Yes.

* * * *

Q Okay. Now, the 638 funding that you get from the Indian Health Service, are there any restrictions on that funding that would restrict it for use to Navajo Nation members?

A No.

Q Do you understand my question?

A Can you repeat that?

Q Okay. In the 638 funding that you get from the Indian Health Service, is that funding done pursuant to a contract?

A A grant.

Q A grant. Okay. And is there a contract that specifies the terms of the grant?

[29] A No.

Q Okay. In connection with the grant, are there terms and conditions that, written terms and conditions that you are given that restrict the use of the monies?

A Let me see. We cannot lobby with the money.

Q Okay.

A That's one of them.

Q Now, is that restriction on lobbying, that contained in a document?

A Yes.

Q how would you describe that document?

A probably in the form of a directive.

Q Okay.

A Now, on the application that we submit there are restrictions. We can't use—say, like we can't use the money to construct buildings. We can't use the money to disturb in any way grave sites, exhume bodies or something like that. It's—I think the name of it is compliance, grant compliance list.

Q Okay.

A Those are the only restrictions that I know that we have to abide by.

Q Okay. But whatever restrictions there are would be either in the application for the grant or the grant compliance list or the directive from the Indian Health [30] Service?

A Right.

Q Do you know if there's also any Federal Rules or regulations that you need to comply with in your use of the money?

A We are not to discriminate against color, religion, race, background, and we cannot refuse ambulance services simply because someone is—does not have the ability to pay.

Q Do you know what document that requirement is in?

A Under the compliance list, I believe it is.

Q Okay. Is that pursuant to a federal regulation?

A I believe so.

Q Okay. So if—if you had a person from New York who, you know, was having a heart attack here in Window Rock, you would have to treat that person; is that correct?

A Yes.

Q Regardless of whether the person had insurance or not; is that correct?

A Yes.

Q And without regard to, you know, why that person was here?

A Yes.

Q Okay.

A That's the law. That's a true heart attack.

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[32]

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Q Okay. If a call comes in, how do you know whether or not your ambulance is going to respond or Action Ambulance or Hopi EMS?

A Okay. Our ambulance is the primary response unit, meaning that they have priority. Action is only a transport vehicle, which means that they are not authorized to respond unless we ask them to. Hopi EMS responds only to the Hopi communities within Tuba City. And I think there's two of them.

Q Okay. Does your EMS respond to any calls from the Hopi community?

A Yes.

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Q Do you know whether or not your EMS would respond to—well, let me ask you first. Are you familiar with the situation in Cameron Trading Post in that Cameron Trading Post is located on fee land rather than on reservation trust land?

A No.

Q Well, let me tell you that it is located on fee land. Does that make any difference in whether or not you would respond to a call to Cameron Trading Post?

A No.

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* * * *

Q Do you know if you have an agreement with anybody regarding the Cameron area?

A No. It's just more of like, well, you respond here and we'll respond here, or if you guys get called first, you'll go; if we get called first, we'll go. It's a mutual understanding, I guess. It's not—it's not formal.

Q Okay.

A But then we—some of those people have said let's do away with the paperwork and let's just do our jobs. You know. It's—

Q Respond to whoever needs help?

A Yes. Exactly. It's—

* * * *

[37]

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Q Okay. Is the amount that you charge for response and mileage, is the intent of that to cover the cost of responding?

A It's an average we took of numerous ambulance entities located around the south region, western-something area.

Q Okay. And is that the average of what they charge?

A Yes.

Q Okay. And—let me ask you again, then, is the intent of that charge to cover as much as possible the cost of responding?

A Yes.

* * * *

BEFORE THE NAVAJO TAX COMMISSION
THE NAVAJO NATION

No. 95-008

THE MATTER OF:

ATKINSON TRADING CO., INC.
Taxpayer.

DEPOSITION OF VIRGIL PABLO

April 13, 1995

10:40 a.m.

Navajo Nation Department of Justice

Window Rock, Arizona 86515

PURSUANT TO THE SCRA 1986, Rules 1-026 and 1-030 this deposition was:

TAKEN BY: MR. WILLIAM J. DARLING
ATTORNEY FOR THE TAXPAYER

REPORTED BY: MABEL JIN CHIN, NM CCR #81
Bean & Associates, Inc.
500 Marquette, Northwest, Suite 280
Albuquerque, New Mexico 87102

[3]

* * * *

Q Please state your name for the record?
A Virgil Pablo.
Q What is your business address?
A P.O. Box 4590, Window Rock, Arizona.
Q Okay. Are you an employee of the Navajo Nation?
A I am.
Q What is your position?
A I am a department director.

Q And which department?

A With the 638 Contract Administration Department.

* * * *

[5] Q What is the 638 contract?

A 638, I guess it makes reference to Public Law 93-638. This is a law that was passed in 1975 where it authorizes Indian tribes to administer programs that would otherwise be administered by the funding agency, the Bureau of Indian Affairs, and in this case, social services had been administered by the Bureau of Indian Affairs and in the early 1980s under this authority of the law, the Navajo [6] Nation entered into a contract whereby now the Navajo Nation administers those social services programs.

Q What social services programs are covered by the 638 contract?

A Basically, there are six components within this particular contract. We have a number of other contracts under the division, but for this particular contract, the six components are first, general assistance, which is financial monetary assistance that's provided for eligible applicants. We have a tribal work experience program, a child welfare assistance program, adult institutional care as a fourth component. There's a fifth component, miscellaneous assistance, which entails emergency-type line item. And then the sixth component is our administration, whereby we hire our social workers, caseworkers, and provide funds for program operations.

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[1]

BEFORE THE NAVAJO TAX COMMISSION
THE NAVAJO NATION

No. 95-008

THE MATTER OF:

ATKINSON TRADING CO., INC.
Taxpayer.

DEPOSITION OF DERRICK B. WATCHMAN

April 13, 1995

1:25 p.m.

Navajo Nation Department of Justice

Window Rock, Arizona 86515

PURSUANT TO THE SCRA 1986, Rules 1-026 and 1-030 this deposition was:

TAKEN BY: MR. WILLIAM J. DARLING
ATTORNEY FOR THE TAXPAYER

REPORTED BY: MABEL JIN CHIN, NM CCR #81
Bean & Associates, Inc.
500 Marquette, Northwest, Suite 280
Albuquerque, New Mexico 87102

* * * *

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DERRICK B. WATCHMAN

After having been first duly sworn or affirmed under oath, was questioned and testified as follows:

EXAMINATION

BY MR. DARLING:

Q Would you please state your name, sir?

A Derrick B. Watchman.

Q Okay. And what is your business address?

A My current business address is Dine Power Authority, P.O. Box 3239, Window Rock, Arizona, 86515.

Q And what is the Dine Power Authority?

A The Dine Power Authority is a Navajo Nation enterprise, charged with transmission and generation project development.

Q Okay. And what is your position with the Dine Power Authority?

A Presently I'm the general manager.

Q How long have you been there?

A Since August of '93 -- almost two years.

Q Okay.

A 18 months, I guess.

* * * *

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Q Okay. Before you went to work for the Dine Power Authority, had you previously been employed by the Navajo Nation?

A Yes.

Q Okay.

A Many times.

Q All right. Could you give me just a brief recap of your employment by the Navajo Nation?

A Let's see. I started in 1984 as a budget analyst in the Office of Management and Budget, division or program. And then I moved to program evaluator within the Office of Management and Budget. In 1987 during the summer I was a consultant to the Navajo Tax Commission. I was doing some

economic work. In let's see, the spring or—yes, the spring of 1988, I was selected as the acting [5] executive director of the tax department, Navajo Tax Commission. I was there for a year. And then in 1991 I came back as the executive director of the Navajo Tax Commission and I stayed there through August of '93 as the director.

Q When you say you came back, had you gone—had you worked anywhere else in the interim between the time that you were acting executive director until you came back as executive director?

A Yes.

Q Where were you working?

A I had two functions. One is, after I left as acting I was appointed to the Navajo Tax Commission, so I was doing some work here, but I was living in New Jersey, working for Prudential Capital, a subsidiary of Prudential Insurance Company of America.

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Q What education have you had since high school?

A I have a bachelor's in finance from the University of Arizona. I have a master's in business administration from the University of California at Berkeley.

Q Okay. What part did you have in developing the hotel occupancy tax statute?

A As director of the tax commission I had complete control of all the development of the HOT tax

Q Okay. HOT tax, you mean the hotel occupancy tax?

A Yes, the acronym.

Q Had development started before you came as executive director of the Navajo Tax Commission or did that start under your direction?

A The hotel tax was started under my direction.

Q Okay. And how did you get the idea to start it?

A I guess from many activities. When I was a [7] consultant to the tax commission I did a comprehensive study as to potential tax bases and potential taxes that may or may not be on the Navajo reservation. When I moved into the directorship spot, we recognized that the declining trend in the overall tax revenue base and based upon advice from the tax commission it was recommended that we look at other potential tax sources.

Given that the Navajo Nation is geographically located in areas that have pristine sites, Monument Valley and that kind of stuff, it's an economic given that tourism is a big potential and a market right now on the reservation, so we have taken those factors, looked at what kind of taxes could we possibly design, study, and recommend to the counsel. We looked at several types of taxes. And we, during that point of the hotel development process or during that time we were looking at taxes, we said, well probably the hotel tax would be one that we could present to the council and they would go along with it and adopt it.

Q What other types of taxes were you looking at?

A We were looking at a modification to the business activity tax, where we would overhaul it to make it look like or not make it look, but make it a gross receipts tax. We were looking at an income tax, a Navajo Nation income tax. We were looking at a gasoline tax, and obviously the [8] hotel occupancy tax.

Q What process was followed in presenting the hotel occupancy tax to the commission and passed by the commission—I mean by the council, I'm sorry?

A The council? Is that what you are saying?

Q Yes. What I want to understand is the process that you go through with the Navajo Nation in developing legislation of this sort, presenting it to the council and obtaining council passage?

A Okay. Pursuant to—well, pursuant to Navajo Tax Commission Rules and Regulations, there is a process that

you have to follow and then there's Navajo Code procedures that you have to follow.

First, in any tax, you obviously assess and determine its feasibility, you draft it. In drafting it you work with legal counsel. In our case our legal counsel is the Department of Justice. From there, after we and staff determine its feasibility, its technical merits and its readability, and all those other issues that are involved into it, we present it to the tax commission. I don't remember all the details, but I know that we—the Department of Justice and myself reviews it and we decided it was a go ahead. We presented the proposal to the tax commission. They adopted it. After that, we had public review of the proposal. After the review, we sent it [9] through the SAS process, the tribal review process. After the SAS, it went to the Navajo Nation Council Economic Development Committee. From there, it went through SAS process again, and it went to the Navajo Nation Council for adoption or review, deliberation, and in the case of the hotel tax, adoption.

Q Okay. Who assisted in drafting the hotel tax?

A The Department of the Justice Tax Unit lawyers.

Q Who in particular helped with that?

A In particular, the person that I dealt with a lot is James Bellis.

Q Is he still employed by the Navajo Nation?

A I think so. Is he? Yes.

Q Okay. Now, I take it that the other taxes that you are looking at, the gasoline tax, gross receipts tax, and the income tax were, in fact, not adopted?

A We never presented any proposals to the tax commission or the council.

Q Okay. On any of these three?

A Well, I take that back. We did draft potential legislation, but in looking at feedback from the council and looking at feedback from the committee, it was felt that the hotel occupancy tax was one that we could get through and

have the council adopt with less controversy, with less criticism and what have you, because prior to that, I guess [10] the latest tax that was presented to the council was in 19—early 1980, so it had been over ten years, and the Navajo Nation Council had never taken up a tax proposal in about ten years. So, in line with increasing tribal revenues, in line with trying to have the least resistance and demonstrating that the Navajo Nation, you know, can and continues to exert its tribal sovereignty, we felt that the hotel tax would be the best tax to take at that point.

Q Why did you feel that it was the best tax to take to exert tribal sovereignty?

A Why is it the best tax? Let me think about that. Well, in our public hearings it was felt that because we're a tourism-based economy here for the most part, and if you look at other governmental sovereigns, you usually try to lessen the tax burden on your residents, your taxpayers, and transfer that tax to a transient type of consumer. Based on our, and my information, and with what we saw out in the economy, Navajo Nation economy, we felt that the hotel tax would be the best in that, you know, we would have a tax base for the Navajo people vis-a-vis travel, government budget appropriations, and there would be less impacts on the people that live in the area. And if we could pass a tax on, and that's what a tax is, you past it on to the final consumer. In this case it would be the hotel occupant.

[11] Q Okay. And is it, would it be correct to say that part of your thinking there was that most of the guests at the hotels would not be members of the Navajo Nation?

A We didn't think of it that way. We thought about it as the hotel users.

Q Okay. But the hotel users?

A The occupants.

Q The occupants. You know, you talked about those mainly being tourists?

A Right.

Q So those would be presumably mostly nonmembers of the Navajo Nation, would they not?

A I guess. I don't want to—

Q Well, you talked about you wanted to impose the tax on a transient population rather than on people who are living on the Navajo Nation; right?

A Right.

Q Okay. And you know, the other types of tax that you were considering, those would have a much—much larger, much larger percent of those taxes would end up being paid by members of the Navajo Nation presumably, wouldn't they?

A Presumably, but again, getting back to the historical perspective that I learned, and that is that the nation had not adopted any taxes for over ten years. [12] And that right now a general consumer, you know, Joe Navajo and all that, they don't have to pay any taxes on the reservation. And we felt that we could possibly do a tax like a gross receipts or a sales tax. We could probably get it through the council, but it will take a lot of public education before we could do that. I think back in that particular year, 1992 or '91, revenues are starting to decline, so we needed to add another tax component to the revenue base, and the same time present something to the council that we knew that we could have acceptance by the council and adoption.

Q Okay. But now going back to the impact of these taxes, and let's look at the gasoline tax and compare that to the hotel tax.

A Uh-huh.

Q The gasoline tax, a lot larger percent of that would end up being paid by residents of the reservation as opposed to a hotel tax, wouldn't it?

A Say that question again, please.

Q Wouldn't a gasoline tax have a much—I'm sorry, let me rephrase that. Wouldn't the residents of the reservation

pay a much larger proportion of a gasoline tax than they would have a hotel occupancy tax?

A Yes. Because a lot of miles are driven on the reservation because we just don't have the [13] services here, so—

Q Okay.

A Yes.

Q Did you feel that it would be politically difficult to get a tax through that would have that much of an impact on members of the reservation? Residents of the reservation?

A I guess—I don't know how to answer the political question, but one that would have acceptance by the council as a proposal that would bring in revenue yet would not have such a high impact to Navajo residents, yes.

Q Okay. And of the four taxes that you mentioned, wouldn't it be correct to say that the hotel occupancy tax would have the least impact on residents of the reservation?

A Right. Yes, it would.

Q Okay. Now, I guess I still don't understand your use of the phrase a minute ago, of that the hotel occupancy tax gave the Navajo Nation the opportunity to or would have given them the greatest opportunity to exert their tribal sovereignty. Could you explain your use of that phrase a little bit more?

A I guess with—well, I can explain it the best I can. There is still not a whole lot of respect for Indian governments by outsiders and by businesses and what have you. Businesses and oil companies, hotel companies, [14] whatever, still believe that Indian tribes are archaic, have no status as a government, as a people. And that we could—I could feel it in the public participation, that you don't have any authority because you are a tribe. Yet they don't say that to us, to a state government. And it was pretty clear in a lot of the work that I did that, you know, these people just don't have the respect. So in terms of exerting tribal sovereignty, one way that Navajo government could operate and should

operate is utilizing its tax base, and it was found that the hotel occupancy is a real good tax base.

Any government, Albuquerque, whatever, they capitalize on the tourists. You go to Albuquerque or whatever, you see hotel occupancy tax in the 10, 20 percent range. And that, you know, you try to lessen the burden on your residents and pass it on to people that, you know, flow through.

So, in looking at Navajo taxes and looking at what has transpired, you know, from day one when the tribe, a tribe tried to enact this tax up until 1984, when the Navajo Nation had to go to the Supreme Court and have the Supreme Court say, "Yes, you can tax," all that is kind of in the air and it still circulates today that, you know, people just don't respect the taxing ability of the Navajo Nation.

So it was felt that we would have the least [15] resistance with the hotel tax, yet we could say, "Well, the Navajo Nation is still a viable"—well, Navajo Nation is a government and these taxes extend its governmental powers, so you know, that's just how, that's how I looked at it in putting together the hotel occupancy tax proposal.

Q As part of the development process did you look at what hotels would be impacted by the hotel occupancy tax?

A Yes, we did.

Q Okay. Are any of the hotels that are impacted by the hotel occupancy tax owned by Navajos?

A That's not—that wasn't an issue.

Q Okay. I'm not saying it was an issue or not. I'm just asking you if there were.

A It's not an issue, so we didn't look at it.

Q Do you know that? Do you know whether or not any of the hotels that are impacted are owned by Navajos?

A It was not an issue, so I don't know.

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Q Okay. Could you look through these pages of that exhibit starting at page 1, and tell me if you know if any of those motels or hotels are owned by either Navajo Nation Enterprises or the Navajo Nation or individual Navajos?

A No. I can't tell.

Q Okay. You don't know?

A No.

Q Okay. And there are several pages. If you could leaf through those pages and tell me, if you know?

A No.

Q Okay. On page 3—

A I do know that the Navajo Nation Inn is a Navajo Nation Enterprise.

Q Okay. Is the Navajo Nation Inn subject to the hotel occupancy tax?

A Its customers are.

Q Okay. So, they do collect tax from the customers?

[18] A Yes. They do.

Q Okay. And is there anything on page 4 that you know if it's owned by the Navajo Nation or not?

A No.

Q Or any individual Navajo?

A I don't know.

Q Okay. On page 5?

A No, I don't know.

(Exhibit 21 was marked for identification.)

Q (By Mr. Darling) Could you tell me what Exhibit Number 21 is?

A Exhibit 21 is an Office of the Navajo Tax Commission Tax Education Campaign for the Navajo Public—it's—I guess it's a description of certain things that have gone on with the tax program and what's—it's an explanation of the Navajo tax program and the taxes that the Navajo Nation has.

Q Okay. When was that prepared?

A This was prepared and modified on several occasions. I don't recall the exact date, but upon my coming in as director of the tax program, the first question that was asked is, who are you guys, you know, and so, when I decided to put this type of information, piece it together to explain to the public that the Navajo government does have kind of an IRS type of program, and that it's [19] better for their information to know about it. So in here we address the current taxes and some of the proposals and what the Navajo tax program is all about.

Q On the fifth page of this exhibit does that paragraph represent what you said before about tax revenues in the Navajo Nation declining?

A It does.

Q Okay. On the 7th page of that exhibit it talks about some potential tax sources?

A Uh-huh.

Q One of those you hadn't mentioned before is a general property tax. Had that gotten to any sort of drafting stage or was that just a thought that was never acted on?

A The general property tax is drafted and was presented to council in, I guess in the mid '80s or something, but never went anywhere. To some folks it's still a proposal. To others it wasn't, but to those that thought the GPT is still something, we include that particular line here, but it's something that's been around. The GPT is a proposal to modify the PIT, the Navajo PIT.

Q And what is the PIT?

A The Navajo possessory interest tax.

Q Okay. What does a Navajo possessory interest tax [20] apply to?

A It applies to possessory interest.

Q In what kind of possessory interest?

A Navajo possessory interest.

Q Could you give me an example of the type of possessory interest that would be subject to the tax?

A Navajo mineral leases.

Q Okay.

A It actually applies to all leases.

Q Why was the Navajo hotel occupancy tax constructed so that the revenue went to the tourism development fund?

A If I recall correctly, that was an addition during the council session that the council delegates decided to do.

Q Okay.

A Earmark—in other words, they earmarked the fund.

Q So that wasn't in the original proposal given to the council, then?

A No, it was a thought of the -- not the thought, but the philosophy of the commission to not direct where the money goes. The tax commission responsibility was to provide revenue sources through taxes, and that it's up to the council and/or its committees to decide where that money ought to be used.

Q Okay. Do you have a copy of this document? It's [21] the Resolution of the Navajo Tax Commission.

A Uh-huh.

Q Do you have it available where you can look at it while we—

A Where is that?

Q Okay. This was Exhibit 7 to Harlan Charley's deposition. What does it mean in paragraph 4, that "The initial impact of expanding the tax base will be additional revenues available for government services and projects with minimal impacts to the bearers of the taxes"?

A What does that mean?

Q Yes.

A Just means that there's a tax base on the reservation, that if you enact tax, certain taxes, you can expand the tax program and tax revenues coming in, keeping in mind that you always have to be cognizant of who has to pay those taxes and just a general—this is a statement that the tax

commission acknowledges, that there's both sides to any tax proposal.

Q Okay. Well, I guess the part here that I don't understand, I understand that this—well, let me ask you if I'm correct in my understanding. My understanding is that the purpose of the hotel occupancy tax at least was to have a minimal impact on Navajo businesses, Navajo enterprises, and Navajo residents; is that correct?

[22] A Correct.

Q Why, but why did then you say with minimal impacts to the bearer of the taxes, Navajo businesses, Navajo enterprises, Navajo residents? Wouldn't the bearer of the taxes be the guests at the hotels?

A Right.

Q Okay. And that's what I don't understand is why you said the bearer of the taxes would be Navajo businesses, Navajo enterprises, and Navajo residents?

A Well, I don't understand your question. Say it again.

Q Okay. What I don't understand is why you characterize the bearer of the taxes as Navajo businesses, Navajo enterprises, and Navajo residents, if it's the lodgers that are going to pay the tax.

A Right. And this statement here acknowledges that we're trying to minimize and/or not tax the general Navajo business, the general Navajo enterprise, and the general Navajo resident.

Q Okay. Now, is part of this resolution, my understanding is that the expansion of the business activity tax was also proposed to the tribal commission; is that correct?

A The Navajo Tax Commission, yes.

Q Right. And do you know why that, why the business [23] activity tax was not adopted by the tribal council?

A It wasn't presented to the council.

Q Okay. I thought this is the resolution basically presented to the council.

A No, this one was presented to the Economic Development Committee.

Q Why did the Economic Development Committee reject it, then?

A I don't recall clearly, but I believe something to the effect that there's still concern as to having a business activity tax and a Navajo guaranteed minimum rental payment on their business site lease, and those two issues were prevailing at that time, and that more study needed to be done on it. I vaguely remember that.

Q Okay. The Economic Development Committee in their deliberations, were minutes kept or was a record kept?

A I guess according to Navajo law, yes, it should be.

Q Okay. Would the deliberations of the Navajo council also be kept when they adopted the hotel occupancy tax?

A Should.

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(Exhibit 22 was marked for identification.)

Q (By Mr. Darling) Okay. Do you have a copy of this with you? It's marked as Exhibit 22. It's a resolution of the Navajo Nation Council.

A Yes.

Q Okay. Could you look on your copy of it while I ask you questions?

A Okay.

Q Was this the official enactment by the Navajo Tribal Council, Navajo Nation Council, adopting the hotel occupancy tax?

A Yes.

Q What is the significance of the note in the upper right-hand corner that says "Class `C' Resolution, no BIA action required"?

A I don't know.

Q Okay. Look at paragraph 14.

A Uh-huh.

Q After looking at that, do you recall any other reasons why the business activity tax was tabled for further study?

A Well, I think it's just like I said, there was—the businesses feel that the guaranteed minimum rentalpayment is a tax as well and that the BAT if it also [25] continued would be another tax, and more clarification needed to be provided to the committee as to what that means, and determine whether or not it's a feasible and less disruptive tax for the Navajo Nation.

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Q Okay. Now, let's look specifically at the impact [34] of the tax on hotel operation. First, Section 706 requires the hotel to collect the tax; is that correct?

A That's correct.

Q Why did you refer to it as a branch instead of a hotel?

A I guess it was a matter of semantics because the other tax laws don't say business whatever or—but they say branch.

(A discussion was held off the record.)

(A recess was taken.)

Q (By Mr. Darling) Okay. Now, in addition to requiring the hotel or the branch to collect the tax, the hotel also has to file a return reporting the amount of the tax; is that correct?

A That's correct.

Q Okay. And the branch also has to then pay over the tax that's reflected on the return; is that correct?

A That's correct.

Q Okay. Now, the commission under the tax act, the commission has the right to assess the branch for any deficiencies, interest, penalty and cost; is that correct?

A That's correct.

Q Okay. And any taxes assessed become the liability of the branch; is that correct?

Do you want to refer to this? This is in Section [35] 706.

A Yes, it does.

Q 5—

A Yes, It does become a liability, Section 706(5).

Q Now, isn't it also correct that the Navajo tax code says, or the hotel occupancy tax says that, "If the branch is an association, joint venture, or partnership, or a part thereof, then all associates, participants, or partners both general and limited, shall be jointly and severally liable for the taxes"?

For the court reporter could you make an audible response, please?

A Yes, that's correct.

Q What is the authority of the Navajo Nation to assess a liability on a limited partner, for instance, a limited partner of a limited partnership?

A The authority, I guess, is the Navajo Nation's ability to impose its taxes.

Q Does the Navajo Nation have a statute regulating limited partnerships on the reservation?

A I don't think so.

Q Okay. Do you understand that under state law a limited partnership is not libel for the debts of a limited partnership beyond the amount of his contribution to the limited partnership?

[36] A We're in Navajo Nation, so you follow Navajo Nation law.

Q Okay. Does Navajo Nation law deal at all with limited partnerships?

A I don't know.

Q Okay. Do you claim that Navajo Nation law would apply to a business association between nonmembers that was operating on fee land?

A Navajo Nation law says right here that it applies to whatever you are saying there.

Q All right. Now, that section goes on to say, "Subject to alteration by agreement between them, any associate, participant, or partner shall have a right of contribution from any other associate, participant, or partner for its proportional share of taxes paid, and shall have a lien on the interest of any such other for said taxes paid." Now, by what authority does the Navajo Nation have the right to impose a lien on a partner's interests in a partnership?

A Ask that question again, please.

Q Yes. By what authority does the Navajo Nation have the right to impose a lien on a partnership interest?

A I guess by Navajo Nation being a government, an Indian government.

Q Okay. Are you saying that you have the right to [37] regulate the relationship between nonmembers, business relationship between nonmembers of a business being operated on fee land?

A The Navajo Nation and its laws apply to all of the activities within the exterior boundaries of Navajo land, Navajo reservation.

Q So you are saying that the Navajo Nation does have the right to regulate the relationships, the business relationships between nonmembers on fee land?

A I am saying that the Navajo Nation has a right to govern its activities within the exterior boundaries of the reservation.

Q Okay. And I understand that statement, but I'm trying to find out now how far you think that reaches and I'm saying if you have got two nonmembers—

A Right.

Q —who form a partnership between them—

A Right.

Q —and they form that partnership between them pursuant to Arizona law, and the partnership operates a business on fee land but within the exterior boundaries of the

reservation, I'm saying, do you contend that the Navajo Nation has the right to regulate that relationship?

A I don't contend. I think Navajo Nation as a body, government body, contend that anything, any governmental [38] activity, business activity within the exterior boundaries of the reservation is subject to Navajo law.

Q Okay. Is it correct that Section 710 requires each branch or each hotel to keep records regarding the room receipts and taxes collected?

A That's correct.

Q Okay.

Q Could you look at Section 710(b), please? What exactly does that mean?

A It means that in the case of a corporation where maybe you have a consolidated accounting system and that everything is all put together at a place that's off the reservation, that the reservation enterprise, the reservation-based hotel must keep its own record.

Q Does that mean the record regarding the room receipts and taxes collected?

A Yes. Anything on the record keeper, right.

Q Okay. Is a hotel required to keep any record pursuant to this other than or beyond room receipts and taxes collected?

A They may, yes. If there's another type of return or something that the tribe requires.

Q Okay. But unless there's some other type of return that the tribe requires, the only thing they need to keep is room receipts and taxes collected; is that correct?

[39] A Right. For the administration of the hotel, yes.

Q Okay. Is it correct that Section 712, imposes penalties on the hotel for failure to file the tax returns?

A That's correct.

Q Okay. And there's penalties and interest imposed on the hotel for failing to pay the amount of the tax by the time it's due; is that correct?

A That's correct.

Q Okay. And there's also a penalty for attempting to evade or defeat the tax; is that correct?

A Yes.

Q Okay. Now, under Section 716, which states that "Any branch or other person obligated to pay taxes pursuant to this chapter, to designate an individual, to file a return, to provide information or documents or allow access to equipment within its possession or control, to furnish a surety bond"—I assume that's "or other security, or to comply with a lawful order of the Commission, and failing to do the same in accordance with the provisions of this chapter and the regulations, may have its rights to engage in productive activity within all or some of the Navajo Nation suspended." What exactly, what procedure would be used to suspend the right to engage in productive activity?

A I don't believe we had a case.

Q What did you have in mind when this was put in the [40] act?

A That if they don't pay their taxes, then the Navajo Tax Commission will have to engage in activities to see that they not operate until such time that taxes are paid.

Q Okay. And what enforcement tools do you have to enforce this provision?

A We have never had a case when I was there.

Q Okay. Yes. But my question was, you know, what tools do you know of that are available to enforce this?

A Applying or imposing a lien. That's probably imposing a lien.

Q And how would imposing a lien suspend the right to do business or to engage in productive activity?

A Well, it's just put on the record that there's a tax assessment due.

Q Okay. Does the commission have the authority to issue orders to taxpayers?

A Yes.

Q And how are those orders enforced?

A We have never had a case, but we use the Navajo Law Enforcement.

Q Okay. So you know, if you entered an order to suspend a right to engage in productive activity you are saying that you could send the Navajo Nation Police out to enforce that order; is that correct?

[41] A That's correct.

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[49]

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Q Okay. What is the relationship between the Navajo Nation and a guest at a hotel within the exterior boundaries of the reservation that gives the Navajo Nation the authority to levy that tax on the guest?

A What is the relationship?

Q Yes.

A I would suppose it's because they are within the boundaries of the Navajo reservation.

[50] Q Okay. Is there any other basis for levying the tax?

A That is the tax, to impose the tax on this person in a hotel.

Q Right.

A Right.

Q Okay. Is there any other basis for levying the tax on that person at a hotel, other than the fact that he is within the exterior boundaries of the reservation?

A I guess that is the basis, that you are within the exterior boundaries of the reservation. It's just like if you go to Albuquerque you are in the boundaries of that jurisdiction, so you are subject to those taxes.

Q Okay. But if you go to the Indian Pueblo Cultural Center in the middle of Albuquerque you don't pay the taxes.

A Yes, because they probably don't have taxes.

Q Right.

A The pueblo.

Q The pueblo. Okay. But you are in the middle of Albuquerque when you are there and you don't pay Albuquerque taxes?

A But you are getting into the area of tribal Indian law and there's a separate area dealing with that, you know.

Q And that's what we're in. We're right in the middle of Indian law?

[51] A Right.

Q And is there any other basis that you are aware of—I understand what you are saying about you contend that because the person comes within the exterior boundaries of the reservation that you have the right to tax that person for renting a room?

A Correct.

Q Even if the room is located on fee land and is rented from a nonmember. Is that correct?

A The tax is imposed on the lodger using a room within the exterior boundaries of the reservation.

Q That's true even if the room is owned and rented to him by a nonmember?

A That's irrelevant. The hotel is within the exterior boundaries of the reservation.

Q Okay. A lot of times there's, you know, more than one basis for doing something, and what I'm asking—I understand that. I'm asking if there's any other basis that you know of for imposing the tax.

A The Navajo Nation laws extends to all activities within the exterior boundaries of the reservation and that's all that the tax commission needs to operate under.

Q Okay. Are you familiar with the case called United States versus Montana?

A No.

OFFICE OF THE
NAVAJO TAX COMMISSION

TAX EDUCATION CAMPAIGN
FOR THE
NAVAJO PUBLIC

Derrick B. Watchman
Executive Director

OUTLINE
TAX EDUCATION CAMPAIGN FOR THE NAVAJO PUBLIC

I. HISTORY OF THE NAVAJO TAX COMMISSION

1. Establishment
2. Current Taxes
   a. Possessory Interest Tax
   b. Business Activity Tax
   c. Oil & Gas Severance Tax

II. NAVAJO FISCAL STRUCTURE

1. Collection of Revenues
2. Process of Revenues and Collections

III. DECLINING RESOURCE BASE

1. Natural Resources—Declining
2. Navajo Population—Increasing
3. Navajo Revenues—Declining

IV. SOCIOECONOMIC IMPACT AND MAGNITUDE NEEDS

1. Unemployment
2. Education
   etc.
3. Navajo economy supports border towns

V. APPROACH TO TAXATION

1. Development of a Comprehensive Navajo Tax Program
   a. Proposed Comprehensive Finance Act 1992
2. New Proposed Tax Laws
   a. General Property Tax
   b. Gross Receipts Tax
   c. Payroll Tax

d. Lodging Tax

3. Federal Tax Incentives
4. Other Taxable Areas
5. Local Assessment and Use

Presently, the Navajo Tax Commission administers and enforces three different tax laws:

CURRENT TAXES

	RATE
PIT	3%
BAT	5%
SEV	4%

Illustration #1 (Current three tax laws)

1. Possessory Interest Tax (PIT) - CJA-13-78
   A tax on the property rights under a lease granted by the Navajo Nation, including the right to the lease surface and underlying natural resources.

2. Business Activity Tax (BAT) - CAP-36-78
   A tax on the building, altering, repairing, or demolishing in the ordinary course of business construction.

3. Oil & Gas Severance Tax (SEV) - CO-79-85
   A tax on the severing, production, or removal of oil and gas from the soil in any manner whatsoever.

In 1985, the Navajo Tribal Council amended the Business Activity Tax law to include Construction Activity.

These are the three kinds of tax laws which have been passed by the Navajo Tribal Council. Currently, we have more than 740 taxpayers in all three categories on our tax rolls and we believe there are more which will be added.

The five membered Navajo Tax Commission is assisted by the office of the Navajo Tax Commission, with a staff

of 16 employees. Three Attorneys from the Navajo Nation Department of Justice are assigned full-time to work with the tax program.

Finally, taxpayers have the right to appeal tax assessments should they disagree. The tax law and regulations provide for this. If a taxpayer disagrees with their assessments, he can appeal to the Office of the Navajo Tax Commission to discuss his concerns. This appeals process ensures the taxpayer a fair and equitable tax hearing.